United States Court of Appeals

for the Second Circuit

APPENDIX

No. 74-2602

74-2602

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

RALPH EDWARD BALDWIN
Petitioner-Appellant

B

v.

MAJOR GENERAL REGINALD M. CRAM, Adjutant General, National Guard of the United States; BRIGADIER GENERAL PHILLIP A. ALLICON: "JOHN DOE" COMMANDING OFFICER, FORT DIX, NEW JERSEY: ROBERT F. FROEHLKE, Secretary of the Army of the United States; MELVIN LAIRD, Secretary of Defense of the United States; and Lt. General CLAIRE R. HUTCHIN, JR., OR His Successor as Commanding General, First United States Army District of the United States.

Appellees

On Appeal from the United States District

Court for the District of Vermont



JOINT APPENDIX

Mary Just Skinner, Esq.
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PAGINATION AS IN ORIGINAL COPY

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CIVIL DOCKET

UNITED STATES DISTRICT COURT

COFFR'N

Civ. 6805

Jury demand date:

D. C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
Ralph Edward Baldwin vs. Major General Reginald M. Cram, Adjutant General, National Guard or the United States; Brigadier General Phillip A. Allicon; "John Doe" Commanding Officer, Fort Dix, New Jersey; Robert F. Froehlke, Secretary of the Army of the United States; Melvin Laird, Secretary of Defense of the United States; and LT. General Claire E. Hutchin, Jr., His Successor as Commanding General, First United States Army District of the United States.	For plaintiff: Vt. Legal Aid, Inc. Burlington, Vermont J. Morris Clark, Esq. Mary J. Skinner, Esq. Off. Atty. Gen. State of Vermont For defendants (except Cram & Allicon) U. S. Attorney William Keefe, Esq. Ass't. Attorney General Montpelier, VT for Defts. Cram and Allicon.

STATISTICAL RECORD	COSTS	DATE 1972	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed JAN 4 1973	Clerk	12-11	#20481	15 00	
		12-15	C.A.#27		15 00
J.S. 6 mailed OCT 4 1974	Marshal				
Basis of Action: Petition for Writ of Habeas Corpus	Docket fee				
	Witness fees				
Action arose at: 2	Depositions				

1

DATE	PROCEEDINGS	Date Order or Judgment Not
1972		
Dec. 8	Filed Application for Writ of Habeas Corpus.	1.
" "	Filed Memorandum of Law in Support of Petition for Writ of Habeas Corpus and Temporary Restraining Order.	2.
" "	Hearing before Judge Coffrin on Petitioner's request for Temporary Restraining Order in connection with application for Writ of Habeas Corpus. J. Morris Clark, Esq. and Mary J. Skinner, Esq. for Petitioner. Norman Cohen, Esq., Assistant U. S. Attorney for Government. William Keefe, Esq. Assistant Attorney General for Defendants Cram and Allicon.	
" "	Mr. Keefe for Defendants Cram and Allicon moved that case be dismissed as to said Defendants.	
" "	Decision reserved.	
" "	Statements made to Court by Mr. Clark, followed by Mr. Cohen.	
" "	Phillip A. Allicon, sworn by Clerk, was examined for Government, cross examined for Petitioner and examined for State Defendants.	
" "	Arguments were made to the Court by Mr. Cohen.	
" "	Issued Temporary Restraining Order and delivered same to Marshal for service.	
" 11	Filed Order to Show Cause. Mailed copy to Attorneys.	3.
" 11	In Court before Judge Coffrin. J. Morris Clark, Esq. for Plaintiff. Norman Cohen, Ass't. U.S. Attorney for Government.	
" "	Hearing on Order to Show Cause.	
" "	Statement made to Court by Mr. Cohen, followed by Mr. Clerk.	
" "	Court makes inquiries of Mr. Cohen.	
" "	It was determined that plaintiff was not A W O L.	
" "	Heraing continued. Parties to stipulate.	
" 13	Filed Amended Application for Writ of Heabeas Corpus and Application for Writ of Mandamus.	4.
" 15	" Temporary Restraining Order, returned served.	5.
" 30	" Stipulation that TRO granted 12-8-72 is continued for 30 days.	6.
1973		
Jan. 2	Upon consideration of Stipulation that TRO granted on 12-8-72 remain in force for thrity days beyond that date, it is	
" "	ORDERED: Granted. Attorneys notified.	
" 5	Filed Stipulation that TRO is hereby continued until further hearing can be had on the merits of the matter.	7.
" 5	Upon consideration of Stipulation that TRO is hereby continued, until further hearing can be had on the merits of the matter, it is	
" "	Ordered: Granted. Attorneys notified.	
1973		
Sept. 14	Filed Govt's Motion for Summary Judgment with Appendices A - L inc.	1. 8.
1974		
Filed 19	Filed Affidavit of Ralph Baldwin.	9.
" "	" Motion to amend Complaint.	10.
" "	In Chambers, hearing on Government's motion for summary judgment. Mary J. Skinner, Esq. for Plaintiff; Jerome O'Neill, Esq. for Government.	
" "	Court suggests that counsel get together and agree upon certain facts so as to narrow issues. Court directs counsel to file statement of facts agreed upon within one week(2/26/74); Hearing will then be set on disputed facts and outstanding motions.	
Mar. 15	Filed Federal Defendants' motion to dismiss and memorandum of points and authorities.	11.

Civ. No. 6805 Ralph Edward Baldwin vs. Major General Reginald M. Cram, et a

D. C. 110 Rev. Civil Docket Continuation

DATE 1974	PROCEEDINGS	Date Ord Judgment
Mar. 18	In Chambers, hearing on Government's motion for summary judgment; and on Government's motion to dismiss. Mary J. Skinner, Esq. for Plaintiff; Jerome O'Neill, Esq. for Government.	
" "	Statements made to Court by Mr. O'Neill and Ms. Skinner.	
" "	Decision reserved. Plaintiff has until April 15, 1974, to file memo; Government has additional 10 days to file reply memo.	
Apr. 29	Filed Memorandum of Law in opposition to respondents Motion For Summary Judgment and Motion to Dismiss.	
Sept. 12	Filed Opinion and Order -- The Court finding itself without jurisdiction in this matter, the application of petitioner is dismissed and the temporary restraining order granted 12/8/72 is dissolved. Copy mailed to attys.	12
Sept. 17	At the Call of the Calendar before Judge Coffrin, it is	13.
" "	ORDERED: case dismissed.	
Oct. 31	Filed Pltf's Notice of Appeal. Mailed copy to Judge Coffrin, Mary Just Skinner, Esq., U. S. Atty., William Keefe, Esq., Court Reporter and Clerk, U. S.Court of Appeals for the Second Circuit.	
Nov. 15	Filed Pltf's Motion to Stay.	14.
" "	" Pltf's Motion for Leave to Proceed in forma pauperis.	15.
" "	" Affidavit of Pltf in support of Motion to Proceed in forma pauperis.	16.
" 18	Ordered--Let Pltf proceed on appeal herein without payment of costs or fees, in forma pauperis. Attorneys notified.	17.
" 29	Filed Government's Opposition to Motion to Stay.	
Dec. 6	Mailed Record on Appeal to Clerk, U. S. Court of Appeals for the Second Circuit. Attys. notified.	18.
" 18	Filed Plaintiff's Amended Motion to Stay.	
1975		19.
Jan. 13	" Transcript of Hearing held 12-8-72.	20.
" "	Mailed Supplemental Record on Appeal to Clerk, U. S. Court of Appeals for the Second Circuit, N.Y., N.Y. Attys. notified.	
Jan. 16	Filed Authorization to pay Francis A. Cumming, Reporter for services.	
Mar. 14	Filed Order allowing plaintiff's motion for leave to proceed in forma pauperis on appeal. Copy mailed to attys.	21.
		22.

COPY

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED
SEP 12 2 00 PM '74
CLERK
DEPUTY CLERK

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Ralph Edward Baldwin	:	
	:	
v.	:	
	:	
Major General Reginald M. Cram, Adjutant General, National Guard of the United States; Brigadier General Phillip A. Allicon; "John Doe" Commanding Officer, Fort Dix, New Jersey; Robert F. Froehlke, Secretary of the Army of the United States; Melvin Laird, Secretary of Defense of the United States; and Lt. General Claire E. Hutchin, Jr., his successor as Commanding General, First United States Army District of the United States	:	Civil Action File No. 6805

OPINION AND ORDER

This case is before the Court on plaintiff's motion to amend his petition, defendants Froehlke, Laird, Hutchin and Doe's (Federal defendants) motions for summary judgment and all defendants' motions to dismiss the complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted.

Petitioner voluntarily enlisted in the Vermont National Guard in December, 1971 for a six year period. He was ordered to report to Fort Leonard Wood, Missouri, in May, 1972 for his six month active duty training and did so, but went absent without leave (A.W.O.L.) in June, 1972.

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In July, 1972 he returned voluntarily to the military at Fort Devens, Massachusetts, and subsequently was returned to Fort Leonard Wood.

A.W.O.L., petitioner had consulted civilian doctors who advised him that he should be separated from the military. Upon his return to Fort Leonard Wood, petitioner allegedly sought a discharge from further military service on the grounds of unsuitability and unfitness, and submitted letters from the civilian doctors who examined him in support of his request. Petitioner further alleges, upon information and belief, that his commanding officer requested a psychiatric evaluation be performed upon petitioner. He alleges that he participated in such an evaluation while at Fort Leonard Wood, but never learned whether he would receive a discharge. Petitioner was ordered to active participation at Fort Leonard Wood on or about August 15, 1972 and again went A.W.O.L. on August 18, 1972. Thereafter, petitioner was returned to the control of the Vermont National Guard where he was processed as an unsatisfactory participant in the Reserve Enlistment Program and as such received orders to report to Fort Dix, New Jersey, on December 11, 1972 for 22 months and 10 days of active duty.

After a hearing on December 8, 1972, this Court issued a temporary restraining order restraining respondents from asserting control over the petitioner which by stipulation of the parties was continued until further hearing in this case. Petitioner thereafter amended his petition to include 28 U.S.C. § 1361 as an additional jurisdictional ground.

I. Petitioner's Motion to Amend

Petitioner seeks to amend his petition by substituting Army Regulation (AR) 635-212 for AR 135-178 as the applicable regulation. The two regulations are similar, but AR 635-212 applies to persons on active duty while AR 135-178 applies to reservists. According to paragraph 1-1a(2) of AR 135-178, separation of reservists on initial active duty training would be governed by the appropriate active army regulation,--in this case, AR 635-212. We therefore grant petitioner's motion to amend his petition.

II. Defendants' Motion for Summary Judgment

The federal defendants have moved for summary judgment. In light of the action we take on their motion to dismiss the complaint, we find it unnecessary to decide the motion for summary judgment.

III. Motion to Dismiss the Complaint

Defendants rely on two grounds in their motion to dismiss the complaint. First, they claim that the Court does not have subject matter jurisdiction to consider petitioner's claims and second, they allege that the complaint fails to state a claim upon which relief can be granted because petitioner does not have standing to complain that the Army failed to discharge him under AR 635-212.

Of course, the standard to be applied in ruling on a motion to dismiss is whether the plaintiff can prove any set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957);

Blair v. Rockefeller, 469 F.2d 641, 642 (2d Cir. 1972).

We begin with the propositions that not every violation of a military regulation gives a serviceman a justiciable claim, Cortright v. Resor, 447 F.2d 245, 251 (2d Cir. 1971), cert. denied, 405 U.S. 965 (1972), and that not every regulation is developed for the protection of servicemen. Many regulations are designed to promote the efficient functioning of the military establishment, id., and do not confer any rights on servicemen. The question in this case is into which category does AR 635-212 fall. The courts that have ruled on this precise question have held that AR 635-212 is not for the benefit of the individual soldier, but for the Army's benefit. Allgood v. Kenan, 470 F.2d 1071 (9th Cir. 1972); Silverthorne v. Laird, 460 F.2d 1175 (5th Cir.), aff'g 341 F. Supp. 443 (W.D. Tex. 1972).

In Silverthorne v. Laird, 460 F.2d 1175, the Fifth Circuit emphasized that the regulation is designed to enable the Army to purge itself of undesirable and unproductive soldiers and that the soldier has no right to apply for discharge as unfit or unsuitable. Rather, the Court said, it is the unit commander who must initiate the proceedings. In Silverthorne, the unit commander had initiated the proceedings by sending the plaintiff to a psychiatrist, but the Court held that the regulation did not require the unit commander to proceed any further, even if the psychiatrist recommended discharge. The Court also stated that because of the nature of AR 635-212, it was without power to review the Army's exercise of discretion, even to the limited extent of searching for a basis in fact. The Ninth Circuit's holding

in Allgood v. Kenan, 470 F.2d 1071 (9th Cir. 1972), is similar to that in Silverthorne. The Court concluded there that:

> [C]ommanders are not required to initiate proceedings for discharge, or to continue proceedings already initiated, even if military medical consultants have recommended that resort to the regulation might be appropriate in a given case. Cf. Silverthorne v. Laird, supra.

470 F.2d at 1074.

Petitioner cites Patterson v. Stancliff, 330 F. Supp. 110 (D. Vt. 1971), as being similar to the case before us. In Patterson, Chief Judge Leddy was faced with a case where the unit commander had initiated a discharge proceeding under AR 135-178 and it had been acted on officially by the Army, which denied the request. The Court reasoned that where petitioner had been processed through all channels and a ruling had been obtained from the ultimate authority, he was entitled to have that ruling reviewed for a basis in fact. Here, however, no discharge proceeding had been initiated and there is no ruling to review.

We find Patterson v. Stancliff to be distinguishable on the facts and agree with the rulings of the Fifth and Ninth Circuits in Silverthorne v. Laird, supra, and Allgood v. Kenan, supra. We hold that the action or non-action alleged in petitioner's application is solely within the discretion of the Army, that petitioner has no right to request discharge under AR 635-212, that the Army at this stage of the proceedings has no duty to discharge petitioner, and that this Court is without jurisdiction to review the action of the Army to date in this matter.

WHEREFORE, the Court finding itself without jurisdiction in this matter, the application of petitioner is dismissed and the temporary restraining order granted December 8, 1972 is dissolved.

Dated at Burlington in the District of Vermont, this 12th day of September, 1974.

District Judge

ARMY REGULATION 635-212

AR 635-212 provides in pertinent part:

1. Purpose. This regulation establishes policy and provides procedures and guidance for eliminating enlisted personnel who are found to be unfit or unsuitable for further military service.

* * * *

6. Applicability. An individual is subject to separation under the privisions of this regulation when one or more of the following conditions exist:

* * * *

b) Unsuitability
   1) Inaptitude.---
   2) Character and behavior disorders. ---
   3) Apathy (lack of appropriate interest); defective attitudes, and inability to expend effort constructively. ---

* * * *

7. Requirements. ---
   a. Counseling. When an individual's behavior has been such that continued behavior of a similar nature may warrant action against him under this regulation, the individual will be counseled by a responsible person or persons. Each counseling session will be recorded (to include date and by whom counseled). Counseling will include but not be limited to the following reasons for counseling; the fact that continued behavior of a similar nature may result in initiating action under this regulation; and if action is taken and separation accomplished, the type of discharge that may be issued and the effect of each type.

   b. Rehabilitation. As a minimum, one of the following measures will be taken:
      1. Replacement stream personnel. ---
      2. Other than replacement stream personnel.---
      3. Permanent charge of station transfer. ---

   c. Waivers' Counseling and rehabilitation may be waived as follows:
      1. Counseling required in a above and rehabilitation required by b above may be waived by the convening authority when separation is being considered under the provisions of paragraph---6b, except that counseling is required for personnel being considered for separation under the provisions of 6b(1), (3), and (4).

* * * *

8. Medical evaluation.
   a) When a unit commander determines that an individual is to be processed for separation under this regulation, he will institute refer the individual to the medical treatment facility providing dispensar care and request a medical and mental status evaluation. Sufficiently detailed information about the reasons for

considering the individual unfit or unsuitable should be furnished the medical treatment facility to allow medical examiners a thorough understanding of the contemplated action.

b) The medical treatment facility roviding dispensary care will accomplish the final type physical examination and mental status evaluation.

* * * *

9. Disposition through medical channels.
a. When the medical treatment facility commander determines that an individual being considered for elimination for unsuitability does not meet retention medical standards (AR 40-501), he will process the individual in accordance with Ar 40-3. The individual's unit commander will be notified of this action.

Army Regulation 40-501, chapter 3, Retention Medical Fitness Standards, paragra h 3-1 "sets forth the various medical condition and physical defects which normally render a member unfit for further military service." Army members with conditions listed therein will normally be considered "unfit by reason of physical disability." Paragraph 3-3.

Army Regulation 40-501, Paragraph 3-3la states:

Character and Behavior Disorders.

Character and behavior disorders are considered to render an individual administratively unfit rather than unfit because of physical disability. Interference with performance of effective duty will be dealth with through appropriate administrative channels.

ARMY REGULATION
No. 635–212

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, D.C., *15 July 1966*

c1, 2, 3, 4, 5, 6, 7, 8, 9, 10

PERSONNEL SEPARATIONS

DISCHARGE
UNFITNESS AND UNSUITABILITY

(For general provisions, see AR 635-200)

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*This regulation supersedes AR 635-208, 8 April 1959, including C 5, 6 October 1961 and C 6, 15 November 1961; and AR 635-209, 8 April 1959, including C 6, 6 October 1961, and C 8, 30 April 1964.

THE ARMY LIBRARY

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Section I. GENERAL

1. Purpose. This regulation establishes policy and provides procedures and guidance for eliminating enlisted personnel who are found to be unfit or unsuitable for further military service.

2. Scope. This regulation applies equally to personnel enlisted, inducted, or ordered to active duty and to Reserve component personnel on active duty for training under the Reserve Enlistment Program of 1963.

3. Policy. *a.* Action will be taken to separate an individual for unfitness when it is clearly established that—

(1) Despite attempts to rehabilitate or develop him as a satisfactory soldier further effort is unlikely to succeed; or

(2) Rehabilitation is impracticable (as in cases of confirmed drug addiction) or he is not amenable to rehabilitation measures (as indicated by the medical and/or personal history record); or

(3) An unfitting medical condition (AR 40–501) is not the direct or substantial contributing cause of his unfitness (para 9*b*).

b. Action will be taken to separate an individual for unsuitability when it is clearly established that—

(1) It is unlikely that he will develop sufficiently to participate in further military training and/or become a satisfactory soldier, *and*

(2) He meets retention medical standards (AR 40–501) (para 9*a*).

c. Commanders will not take action under this regulation in lieu of disciplinary action solely to spare an individual who may have committed serious misconduct the harsher penalties which may be imposed under the Uniform Code of Military Justice.

4. Types of separation. *a.* An individual separated by reason of unfitness will be furnished an undesirable discharge certificate except that an honorable or general discharge certificate may be awarded if the individual being discharged has been awarded a personal decoration or if warranted by the particular circumstances in a given case.

b. An individual separated by reason of unsuitability wil be furnished an honorable or general discharge certificate as warranted by his military record.

5. Authority. *a.* Approval of Headquarters, Department of the Army is required before individuals who have completed 18 or more years active Federal service may be discharged.

b. Commanders exercising general court-martial jurisdiction are authorized to convene boards of officers for unfitness and unsuitability and to order separation, except that they may not order discharge of personnel referred to in *a* above.

c. Commanders exercising special court-martial jurisdiction are authorized to convene boards of officers for unsuitability and to order separation, except that they may not order discharge of personnel referred to in *a* above.

6. Applicability. An individual is subject to separation under the provisions of this regulation when one or more of the following conditions exist:

a. Unfitness.

(1) Frequent incidents of a discreditable nature with civil or military authorities.

(2) Sexual perversion including but not limited to—

(*a*) Lewd and lascivious acts.

(*b*) Indecent exposure.

(*c*) Indecent acts with, or assault upon, a child.

(*d*) Other indecent acts or offenses.

(3) Drug addiction or the unauthorized use or possession of habit-forming drugs or marijuana.

(4) An established pattern for shirking.

(5) An established pattern showing dishonorable failure to pay just debts.

(6) An established pattern showing dishonorable failure to contribute adequate support to dependents or failure to comply with orders, decrees, or judgments of a civil court concerning support of dependents.

(7) added - See C3

b. Unsuitability.

(1) *Inaptitude.* Applicable to those persons who are best described as inapt, due to lack of general adaptability, want of readiness of skill, unhandiness, or inability to learn.

(2) *Character and behavior disorders.* As determined by medical authority, character and behavior disorders and disorders of intelligence listed in TB MED 15, except for combat exhaustion (3263) and other acute situational maladjustments (3264). Discharges normally should not be accomplished for combat exhaustion (3263) and other acute situational maladjustments (3264) *per se*, but they may be accomplished for more basic underlying disorders of which the transient state is a manifestation.

(3) *Apathy (lack of appropriate interest), defective attitudes, and inability to expend effort constructively.* While lack of appropriate interest or other defective attitudes may be manifested in conjunction with physical defects or mental or organic diseases, including psychoneurosis, these traits are not necessarily produced by the physical or disease process. On the other hand, individuals considered for elimination may attempt to excuse immature, inadequate, and undisciplined behavior on the basis of minor or nondisabling illnesses. The presence of a physical or mental disease or defect-producing impairment of function insufficient to warrant separation under the provisions of AR 635–40A and related regulations is no bar to discharge for unsuitability.

(4) *Alcoholism.* Unsuitability by reason of chronic alcoholism may develop in persons who have previously rendered many years of adequate service. Although this condition may be a symptom of an underlying mental illness, it more often demonstrates a character and behavior disorder. Rehabilitation of an individual with this condition is difficult, and its success is contingent on early recognition. As soon as it is apparent that an individual has become ineffective and has not responded to rehabilitative measures or is not motivated to take advantage of available local therapeutic measures, prompt elimination is indicated. Personnel will be separated for unsuitability only if the major reason for separation is noneffective duty performance due to chronic alcoholism or addiction to alcohol. These conditions should not be confused with occasional drunken episodes during which an individual commits antisocial acts. In determining whether separation will be for unfitness or unsuitability, the neuropsychiatric report, record of prior service, and other reasons for separation under *a* above should be considered and, if determined to be overriding, may be used as a basis for separation for unfitness.

(5) *Enuresis.* Enuresis may result from many different organic or psychiatric conditions but is most often a product of a character and behavior disorder. Its presence rarely necessitates separation from the military service but when it exists among other manifestations of character and behavior disorders may render an individual unsuitable for further military service. The evaluation of this symptom, preferably, will be done on an outpatient basis.

~~(6) *Homosexuality (Class III—evidences homosexual tendencies, desires, or interest, but is without overt homosexual acts).* All cases involving homosexuals are processed under the provisions of~~

AR 635–89. When an enlisted person's case is determined by a board of officers under AR 635–89 to be Class III and discharge is approved, separation will be accomplished for unsuitability. No further action is necessary.

Section II. COUNSELING AND REHABILITATION

7. Requirements. Commanders will insure that before taking separation action against an individual under this regulation, adequate counseling and rehabilitation measures have been taken. Reassignments accomplished in connection with rehabilitation attempts will be made without expending permanent change of station or military personnel Army (PCS–MPA) funds.

a. Counseling. When an individual's behavior has been such that continued behavior of a similar nature may warrant action against him under this regulation, the individual will be counseled by a responsible person or persons. Each counseling session will be recorded (to include date and by whom counseled). Counseling will include but not be limited to the following: reasons for counseling; the fact that continued behavior of a similar nature may result in initiating action under this regulation; and if action is taken and separation accomplished, the type of discharge that may be issued and the effect of each type.

b. Rehabilitation. As a minimum, one of the following measures will be taken:

(1) *Replacement stream personnel.* Individuals will be recycled (reassigned between training companies) at least once.

(2) *Other than replacement stream personnel.* Individuals will be reassigned between Article 15 jurisdiction at least once, with a minimum of 2 months duty in each unit. This requirement in no way precludes transfer of individuals between special court-martial jurisdictions; however, the minimum time requirement in each unit is applicable.

(3) *Personnel that cannot be reassigned.* In case reassignment is precluded by restriction on expending PCS–MPA funds (e.g., small independent and/or isolated unit), commanders will insure that appropriate alternate rehabilitation measures are employed.

c. Waivers. Counseling and rehabilitation may be waived as follows:

(1) Counseling required in *a* above and rehabilitation required by *b* above may be waived by the convening authority when separation is being considered under the provisions of paragraph 6*a*(2) or (3), or under the provisions of 6*a*(2), (5), or (6).

(2) The general court-martial convening authority may waive the requirements of *a* and *b* above when he determines that further duty of the individual will create a hazard to the military mission or to the individual.

Section III. MEDICAL PROCESSING

8. Medical evaluation. When a unit commander determines that an individual is to be processed for separation under this regulation, he will initially refer the individual to the medical treatment facility providing dispensary care and request a medical evaluation. Sufficiently detailed information about the reasons for considering the individual unfit or unsuitable should be furnished the medical treatment facility to allow medical examiners a thorough understanding of the contemplated action. The medical treatment facility providing dispensary care will accomplish the final type physical examination. The psychiatric portion of the medical evaluation will not be delegated to a medical officer without specialized psychiatric training

except when a psychiatrist is not available. A written evaluation report based on the results of the medical examination and a review of the individual's health and other locally available medical records will be prepared. The report will briefly but completely describe the essential points of the individual's mental and physical condition in relation to the conduct under consideration; state whether the individual was and is mentally responsible, able to distinguish right from wrong and to adhere to the right, has the mental capacity to understand and participate in board proceedings; state the probable effectiveness of further rehabilitative efforts; and state that the individual meets or does not meet the retention standards prescribed in chapter 3, AR 40-501. The medical treatment facility commander will forward the original of the report to the unit commander. A copy will be filed in the individual's health record.

9. Disposition through medical channels. *a.* When the medical treatment facility commander determines that an individual being considered for elimination for unsuitability does not meet retention medical standards (AR 40-501), he will process the individual in accordance with AR 40-3. The individual's unit commander will be notified of this action.

b. If it appears to the examining medical officer that an individual being considered for elimination for unfitness does not meet the retention medical standards he will refer the individual to a medical board or if there is no board at the examining facility, to the nearest medical treatment facility that does have a medical board. The medical treatment facility commander will furnish a copy of the approved board proceedings to the individual's unit commander. The unit commander will determine whether the individual will be processed further under this regulation or will be processed for separation under medical jurisdiction when medical board proceedings indicate that he does not meet retention standards and the unfitting medical condition is not the direct or substantial contributing cause of his alleged unfitness. The unit commander will notify the medical treatment facility commander of his decision so that appropriate further medical processing may be expedited.

Section IV. PROCEDURE

10. Action by commanding officer. The unit commander of the individual will recommend whether action under this regulation, disposition through medical channels, or disciplinary action should be initiated. The unit commander may—

a. Afford the individual the opportunity to waive his right of a hearing before a board of officers. In such a case, the commander will—

(1) Advise the individual in writing of the basis for the proposed discharge action and advise him that he has the following rights:

(*a*) To present his case before a board of officers.

(*b*) To submit statements in his own behalf.

(*c*) To be represented by counsel.

(*d*) To waive the above rights in writing.

(*e*) Right - C9

(2) An enlisted member will be given a reasonable time (not less than 48 hours) to consider waiver of board proceedings and shall have an opportunity to consult with counsel prior to waiving his rights. An enlisted person serving on an unspecified enlistment may tender his resignation in lieu of board action pursuant to chapter 9, AR 635-200.

(3) The individual will submit a signed statement (fig. 1) indicating that he has been advised of the basis for the contemplated separation and its effect, and of the rights listed in (1) above. The statement will include a request or a waiver by the individual of each right. The counsel will sign the statement and the statement will be included in the unit commander's report.

forwarded in compliance with paragraph 12. If the individual refuses to sign the statement it will be considered that the individual has not waived the rights listed in (1) above.

(4) Waivers of board hearings will not be accepted in the cases of members who have completed 18 or more years of active Federal service. Such members appearing before a board of officers convened under this regulation must be represented by counsel. They may not waive this requirement.

(5) An individual who holds a Reserve status as a commissioned or warrant officer will include in his statement whether a waiver of board hearing applies to his Reserve status.

b. Forward the case with a recommendation that elimination proceedings pursuant to this regulation be initiated (para 12).

c. Forward the case with a recommendation that the individual be processed through medical channels. Such disposition is required if the individual has an incapacitating physical or mental illness which was the direct or substantial contributing cause of the conduct for which action under this regulation is being considered, and action under the Uniform Code of Military Justice is not initiated.

d. Initiate action under the Uniform Code of Military Justice.

e. Added - See CS

11. Flagging action. When flagging action under AR 600-31 has been initiated solely because an individual is being considered for elimination under this regulation and he is to be processed for separation under medical jurisdiction (para 9), his unit commander will remove the flagging action in order that disposition through medical channels will not be delayed.

12. Commanding officer's report. *a. Elimination by reason of unfitness.* When the immediate commander determines that the best interest of the service will be met by elimination action because of unfitness, he will report the facts, in letter form, to the general court-martial convening authority, through the appropriate intermediate commander, if applicable, furnishing the following:

~~(1) Name, grade, service number, age, date of enlistment or induction, length of term for which enlisted (if applicable), and prior service. (Reduction in grade is not a prerequisite to board action.)~~

(2) Statement indicating whether the individual has a Reserve commission or a warrant. (If so, show service number, grade, and date of appointment.)

(3) Reason for action recommended. General, nondescriptive terms will not be used.

(4) Armed Forces Qualification Test (AFQT) score, Aptitude Area scores, and duty military occupational specialty (MOS).

(5) Results of MOS evaluation testing, to include MOS in which evaluated and evaluation score.

(6) Record of counseling.

(7) Description of rehabilitation attempts. (List assignments and duties under different officers and noncommissioned officers, in each organization or unit. Include duration of each assignment (sec. II).)

(8) Statement indicating why he does not consider it feasible or appropriate to recommend elimination for unsuitability or to accomplish other disposition.

(9) Conduct and efficiency ratings (see sec. II, ch 5, AR 600-200).

(10) Record of trials by court-martial.

(11) Record of other disciplinary action. (Include company punishment.)

~~(12) Report of psychiatrist or if a psychiatrist is not available, of medical officer. (Include probable effectiveness of further rehabilitative efforts.)~~

(12) A statement by the individual indicating that he has been advised of his rights (para 10).

(14) Any other information pertinent to the case.

b. Elimination by reason of unsuitability. When the immediate commander determines that the best interest of the service will be met by elimination action for unsuitability, he will forward his recommendation in letter form to the officer exercising special court-martial jurisdiction. He will furnish information outlined in *a* above except that subparagraph (8) will state why he does not consider it feasible or appropriate to effect other disposition.

13. Action by intermediate commander. Intermediate commander may take the following action:

a. Unfitness cases.

(1) Disapprove the recommendation and direct reassignment of the individual to another organization or direct disposition by other means. In case of reassignment, the commanding officer's report will be forwarded to the new organization commander for information.

(2) Approve the commanding officer's recommendation and forward the report to the commander exercising general courts-martial jurisdiction. Disposition through medical channels is required if the individual has an incapacitating physical or mental illness which was the direct or substantial contributing cause of the conduct for which action under this regulation is being considered, and action under the Uniform Code of Military Justice is not initiated.

(3) Recommend separation for unsuitability. Commanders exercising special court-martial jurisdiction may disapprove the recommendation relating to unfitness and take further action under paragraph 15.

b. Unsuitability cases.

(1) Disapprove the recommendation and direct reassignment of the individual to another organization or direct disposition by other means. In case of reassignment, the commanding officer's report will be forwarded to the new organization commander for information.

(2) Approve the commanding officer's recommendations and forward the report to the commander exercising special courts-martial jurisdiction unless he exercises such jurisdiction. Disposition through medical channels is required if the individual has an incapacitating physical or mental illness which was the direct or substantial contributing cause of the conduct for which action under this regulation is being considered, and action under the Uniform Code of Military Justice is not initiated.

14. Action by commander exercising general court-martial jurisdiction. On receiving a recommendation for separation for unfitness, the commander exercising general court-martial jurisdiction may—

a Disapprove the recommendation and direct reassignment of the individual to another organization, in which case the commanding officer's report will be forwarded to the new organization commander for information; or

b. Disapprove the recommendation and return the case to the originator for disposition by other means; or

c. Disapprove the recommendation relating to unfitness, and convene a board of officers, or refer the case to the commander exercising special court-martial jurisdiction to convene a board of officers, to determine whether the individual should be separated for unsuitability; or

d. Convene a board of officers to determine whether the individual should be separated for unfitness. When such action is taken, or if the case is referred to a board for separation by reason of unsuitability, the termination or transfer status of each witness will be ascertained promptly in order to assure the availability of essential military witnesses at the board proceedings. No witness will be trans-

ferred or separated from the service prior to the beginning of a board hearing except where an enlistment or period of service fixed by law expires; in such cases, an attempt will be made to obtain the individual's consent to retention; if the individual does not consent, a deposition or affidavit will be obtained as appropriate; or

e. When the board hearing has been properly and effectively waived, direct separation of the individual for unfitness or unsuitability (para 24); or

f. When the board hearing has been properly and effectively waived, approve separation of the individual for unfitness or unsuitability and suspend execution of the separation (para 20); or

g. Direct that the case be processed through medical channels, if appropriate. Such disposition is required if the individual has an incapacitating physical or mental illness which was the direct or substantial contributing cause of the conduct for which action under this regulation is being considered, and action under the Uniform Code of Military Justice is not initiated.

15. Action by commander exercising special court-martial jurisdiction. On receiving a recommendation for separation for unsuitability, the commander exercising special court-martial jurisdiction may—

a. Disapprove the recommendation and direct reassignment of the individual to another organization, in which case the commanding officer's report will be forwarded to the new organization commander for information;

b. Disapprove the recommendation and return the case to the originator for disposition by other means; or

c. Convene a board of officers to determine whether the individual should be separated for unsuitability. When such action is taken, the termination or transfer status of each witness will be ascertained promptly in order to assure the availability of essential military witnesses at the board proceedings. No witness will be transferred or separated from the service prior to the beginning of a board hearing except where an enlistment or period of service fixed by law expires; in such cases, an attempt will be made to obtain the individual's consent to retention; if the individual does not consent, a deposition or affidavit will be obtained as appropriate; or

d. When the board hearing has been properly and effectively waived, direct separation of the individual for unsuitability (para 24).

e. When the board hearing has been properly and effectively waived, approve separation for unsuitability and suspend execution of the separation (para 20).

16. Appointment of counsel. *a. Counsel for personnel being considered for discharge because of unfitness.* Appointed counsel will be a lawyer within the meaning of Article 27(b)(1) of the Uniform Code of Military Justice unless general court-martial authority certifies in the permanent record the nonavailability of a lawyer so qualified and sets forth the qualifications of the substituted nonlawyer counsel. The original of the certification of nonavailability of qualified counsel must be appended as an exhibit to the report of proceedings. See Exhibit C–4 of the appendix for example.

b. Counsel for personnel being considered for discharge because of unsuitability. If appointed counsel is not a lawyer, a commissioned officer in the grade of first lieutenant or higher will be appointed as counsel. Counsel appointed will be an officer who is fully aware of his responsibility to prepare and present the respondents case.

c. General court-martial authority. When the commander exercising general court-martial jurisdiction takes action under paragraph 14*d*, he will appoint a counsel; appoint a military counsel of the individual's choice, provided the requested counsel is reasonably available; or permit the individual to be represented by civilian counsel at his own expense; as indicated by the individual's signed statement (fig. 1).

d. Special court-martial authority. When the commander exercising special court-martial jurisdiction takes action under paragraph 15*c*,

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he will appoint a counsel; appoint a military counsel of the individual's choice, provided the requested counsel is reasonably available, or permit the individual to be represented by civilian counsel at his own expense; as indicated by the individual's signed statement (fig. 1).

Section V. BOARD OF OFFICERS

17. Board of officers. *a. Organization.* Boards of officers convened to determine whether an individual should be discharged under the provisions of this regulation will consist of not less than three commissioned officers, at least one of whom is in the grade of major or higher, and a nonvoting recorder. Care will be exercised to insure that—

(1) The board is composed of experienced officers of mature judgment.

(2) The board is composed of unbiased officers fully cognizant of applicable regulations and policies pertaining to cases of the nature for which the board is convened.

(3) In the case of an enlisted member of the Women's Army Corps, the board will include an officer of the Women's Army Corps.

(4) In the case of an individual who has a Reserve enlisted status the membership of the board will include a majority of Reserve officers if reasonably available. Where a Reserve majority is not available, the board will include at least one Reserve component officer.

(5) In the case of an enlisted member of the Army who holds a Reserve commission or warrant, the board will be composed of an uneven number of commissioned officers. The officers will be senior in permanent grade to the Reserve grade held by the enlisted member. One member of the board will be a Regular Army officer and the remainder Reserve officers of the Army who are serving on active duty. If the enlisted member also is an ARNGUS officer, at least one member of the board will be an ARNGUS officer, if reasonably available.

(6) The board is provided a competent reporter (or stenographer).

b. General. The following procedures have proved useful in effective processing by boards:

(1) Appointing a permanent board of officers to serve as large a unit as practicable. Changes should be held to a minimum and regulated to provide continuity. This assures uniform treatment for lower or parallel units and will provide a volume of cases sufficient to allow the board members to attain professional competence in this duty. On a permanent board the members will gain experience from which evolves judgment more mature and more sensitive to the interest of both the individual and the service.

(2) Disseminating procedural instructions to lower units by the recorder of the board serving the units.

(3) Recessing a hearing for 30 to 90 days where the board members are unable to reach an agreement based on the data at hand so that further rehabilitation data may be secured.

(4) As an exception to paragraph 13b, AR 15-6, ~~ex~~ medical and psychiatric testimony may be presented in the form of affidavit. However, if the respondent desires to present such evidence, he is entitled to have the witnesses appear in person, if they are reasonably available.

c. Board procedures.

(1) A minimum of 15 days' written notice before date of hearing will be given an individual who is to appear before a board of officers so that he or his council may prepare his case. The individual will be notified of the names and addresses of witnesses expected to be called at the board hearing and that the recorder of the board

will, upon request of the individual, endeavor to arrange for the presence of any available witness he desires to call. A copy of all affidavits and depositions of witnesses unable to appear at the board hearing will be furnished to the individual. When for overriding reasons the minimum of 15 days cannot be granted, the president of the board will insure that the reason for acting before that time is fully explained and recorded in the proceedings of the board. Requests for additional delays (normally not to exceed a total of 30 days after notice) will be granted if in the judgment of the convening authority or the president of the board, delay is warranted to insure that the respondent receives a full and fair hearing.

(2) An enlisted person who has not waived a hearing before a board of officers and whose case is presented to such a board has the following rights which will be explained to the individual by the president of the board:

(*a*) He may appear in person, with or without counsel, at all open proceedings of the board. He may have military counsel of his own choice, provided proper authority determines the counsel requested is reasonably available. He may employ civilian counsel at his own expense. When an enlisted person appears before a board of officers without counsel, the record will show that the president of the board counseled the respondent as to type of discharge that he may receive as a result of the board action, the effects of such discharge in later life, and that he may request counsel. The record will reflect the respondent's response.

(*b*) He may challenge any voting member of the board for cause only.

(*c*) He may request the appearance before the board of any witness whose testimony he believes to be pertinent to his case. He will specify in his request the type of information the witness can provide. The board will secure the attendance of a witness if it considers that he is reasonably available, and that his testimony can add materially to the case. The attendance of military witnesses under the control of the convening authority will be ordered to attend if reasonably available. The attendance of other military witnesses will be requested through command channels. However, witnesses not on active duty must appear voluntarily and at no expense to the Government.

(*d*) He may at any time before the board convenes or during the proceedings submit any answer, deposition, sworn or unsworn statement, affidavit, certificate, or stipulation. This includes but is not limited to depositions of witnesses not deemed to be reasonably available or witnesses unwilling to appear voluntarily.

(*e*) He may or may not submit to examination by the board. The provisions of Article 31, Uniform Code of Military Justice will apply.

(*f*) He and his counsel may question any witness who appears before the board.

(*g*) Failure of the individual to invoke any of the above rights, after he has been apprised of same, cannot be considered as a bar to the board proceedings, findings, and recommendations.

(3) In the case of an enlisted member holding a Reserve commission or warrant, the board will notify the individual that the action involves his Reserve status and may result in the termination of such status.

(4) For rules of procedure and evidence,

and swearing of witnesses, see AR 15-6.

(5) The president of the board will insure that sufficient testimony is presented to enable the board to fairly evaluate the usefulness of the individual. The testimony will be specific as to circumstances, events, times, dates, and other facts.

(6) The proceedings of the board will be as complete as possible and will contain a verbatim record of the findings and recommendations. An example of a report of board proceedings is shown in the appendix.

(7)

d. Recommendations.

(1) The board convened to determine whether an individual should be separated for unfitness will recommend that he be—

(*a*) Separated because of unfitness (indicating type of discharge certificate—honorable, general, undesirable—to be furnished), or

(*b*) Separated because of unsuitability (indicating type of discharge certificate—honorable, general—to be furnished), or

(*c*) Retained in service. The recommendation will indicate the type of duty which it is believed he can perform satisfactorily.

(2) The board convened to determine whether an individual should be separated for unsuitability will recommend that he be—

(*a*) Separated because of unsuitability (indicating type of discharge certificate—honorable or general—to be furnished), or

(*b*) Retained in service. The recommendation will indicate the type of duty which it is believed he can perform satisfactorily.

(3) In the case of an enlisted member holding a Reserve commission or warrant, the board will make separate recommendations concerning Reserve status including type of discharge certificate to be issued. The recommendations should be compatible with enlisted status recommendations. Normally, facts warranting separation from an active enlisted status under this regulation will also warrant termination of a Reserve commission or warrant. Under certain circumstances it may be reasonable to recommend retention in an active enlisted status but termination of a Reserve commission or warrant.

e. Forwarding report of proceedings. The completed report of proceedings will be forwarded to the commander exercising general or special court-martial jurisdiction, as appropriate, for final determination and disposition. When board action is completed on an individual referred to in paragraph 5*a*, the findings and recommendations of the board with complete documentation and the recommendation of the convening authority will be forwarded to The Adjutant General, ATTN: AGPO-SS, Department of the Army, Washington, D.C., 20315, for final determination in cases wheer the convening authority recommends discharge.

18. Limitations on administrative discharges and board hearings. See paragraph 1-13, of AR 635-200 for limitations on administrative discharges and board hearings and rehearings.

Section VI. ACTIONS AFTER BOARD

19. Convening authority action. *a.* When a case has been referred to and action completed by the board, the board proceedings will be reviewed by a qualified officer fully cognizant of applicable regulations and policies to determine whether it meets the requirements of the administrative discharge proceedings. When the board recommends an undesirable discharge

be issued, the proceedings will be reviewed by a member of the Judge Advocate General Corps. Upon completion of the review the commander may—

(1) When the board has recommended separation for unfitness—

(*a*) Direct separation of the individual for unfitness (except for individuals referred to in para 5*a*) (see para 17*e*); or

(*b*) Direct separation of the individual for unsuitability (except for individuals referred to in para 5*a*) (see para 17*e*); or

(*c*) Disapprove the recommendation and direct retention of the individual.

(*d*) Approve separation for unfitness and suspend execution of the separation (para 20).

(2) When the board has recommended separation for unsuitability—

(*a*) Direct separation of the individual for unsuitability (except for individuals referred to in para 5*a*) (see para 17*e*); or

(*b*) Disapprove the recommendation and direct retention of the individual.

(*c*) Approve separation for unsuitability and suspend execution of the separation (para 20).

b. The convening authority's deputy or other officer within his headquarters may be delegated authority to approve, disapprove, or otherwise appropriately dispose of cases except to direct an undesirable discharge. The convening authority is required to personally sign any action directing an undesirable discharge of an enlisted member under his command. He may direct other appropriate disposition of the case. Where the officer exercising special court-martial jurisdiction is the convening authority, authority to approve, disapprove, or otherwise appropriately dispose of a case may not be delegated.

c. The convening authority will not direct a discharge for unfitness when the board of officers has recommended discharge because of unsuitability; nor will he direct discharge when the board of officers has recommended retention.

d. The convening authority will not authorize the issuance of a discharge of a lesser character than that recommended by the board (i.e., honorable to general or general to undesirable). He may authorize issuance of a discharge of a higher character than that recommended by the board (i.e., general to honorable or undesirable to general or honorable).

e. An individual who has completed 19½ or more years active service creditable toward retirement for whom elimination is recommended to Headquarters, Department of the Army, will be afforded the opportunity of applying for retirement to be effective immediately or on completion of 20 years' Federal service; however, he will be advised that authority to submit the application does not carry assurance that the application will be approved. DA Form 2339 (Application for Voluntary Retirement) will be appended when the case is forwarded to Headquarters, Department of the Army. A Report of Medical Examination (SF 88) as prescribed in paragraph 12, AR 635–230 will be appended to the application for retirement.

f. When a member of the Reserve components is to be eliminated under this regulation, the convening authority will determine specifically from Board findings whether the member concerned is being eliminated because of moral or professional dereliction.

20. **Suspension of execution of approved discharge.** In order to afford a highly deserving member a probationary period to demonstrate successful rehabilitation prior to expiration of his enlistment or period of obligated service, the convening authority may suspend execution of an approved discharge for a period not to exceed 6 months. See paragraph 1–15, AR 635–200 for procedures.

21. **Reduction in grade.** When an individual is to be discharged as unfit with an undesirable discharge, the convening authority will direct his immediate reduction to the lowest enlisted grade under the provisions of section VII chapter 7, AR 600–200.

Section VII. RECORDS AND DISCHARGE

22. Disposition of proceedings. *a.* When separation is ordered, the approved proceedings will be forwarded to the commander having custody of the individual's records for the purpose of transfer processing in accordance with ~~AR 612–22 or AR 612–50 and AR 635–61~~. The original copy of the proceedings will be filed as permanent material in the "Field 201 file section" of the individual's DA Form 201.

b. When separation is not ordered by the convening authority, the proceedings will be filed at the headquarters, and the enlisted persons' commanding officer will be notified of the final action. When practicable, the convening authority will direct reassignment of the individual to a different organization. Ultimate disposition of the board proceedings will be governed by AR 345–210.

c. An individual who is to be separated will be furnished a copy of the board proceedings, minus such written medical testimony and reports which would prove injurious to his physical or mental health.

(1) The respondent's copy of the proceedings will be marked "Copy for (name and Army service number of the individual)" and furnished the individual or his counsel. A signed receipt will be obtained from the individual or his counsel to whom the copy is furnished and filed with the original board proceedings. If the individual refuses to sign the receipt, a statement to that effect will be submitted.

(2) If the individual or his counsel does not desire a copy of the board proceedings, or if for any other reason a copy is not furnished, a notation will be made on the individual's copy to accompany the original. Release of this copy thereafter may be made only by The Adjutant General.

d. When the convening authority approves a recommendation that an enlisted member may be discharged from a Reserve commission or warrant he will forward a copy of the approved proceedings to the Commanding Officer, U.S. Army Administration Center, ATTN: AGAC–R, St. Louis, Mo., 63132, for appropriate action under the provisions of AR 135–175. Action under AR 135–175 will be taken after member's separation from enlisted status.

23. Reason and authority for separation. When an individual is discharged, released from active duty for training, or discharged from status as "a Reserve of the Army" pursuant to this regulation, the specific reason and authority for discharge (item 11c, DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)) will be entered as shown in appendix I, AR 635–5.

24. Form of discharge certificate to be given. *a.* An individual discharged for unfitness will be furnished DD Form 256A (Honorable Discharge Certificate), DD Form 257A (General Discharge Certificate), or DD Form 253A (Undesirable Discharge Certificate) as directed by the convening authority.

b. An individual discharged for unsuitability will be furnished DD Form 256A (Honorable Discharge Certificate) or DD Form 257A (General Discharge Certificate) as directed by the convening authority.

25. Separation of ARNGUS and USAR trainees. *a.* ARNGUS trainees will be released from active duty for training and returned to the control of the appropriate State National Guard authorities for discharge. A copy of the approved proceedings will be forwarded to the adjutant general of the State.

b. USAR trainees will be discharged from their status as "a Reserve of the Army".

26. Errors and discrepancies noted before accomplishing discharge. The type of discharge directed by the convening authority may be changed only by Headquarters, Department of the Army. If material errors or discrepancies in approved board proceedings are found by

other headquarters processing the case (i.e., transfer activities), the case will be referred for review before discharge to The Adjutant General, ATTN: AGPO–SS, Department of the Army, Washington, D.C., 20315.

27. Reentry into Army. *a.* To preclude reentry into the Army unless authorized by appropriate authority, the DD Form 214 of all individuals, with the exception of those referred to in paragraph 5*a*, discharged under this regulation will be coded "RE–3" and "Paragraph 9, AR 601–210 applies" entered in item 32.

b. Individuals referred to in paragraph 5*a* discharged under this regulation are not eligible for reenlistment. The DD Form 214 will be coded "RE–4" and "Paragraph 10, AR 601–210 applies" entered in item 32.

Reference

AR 635-212
*C 11

Changes in force: C3, C6 through C9, and C11

CHANGE No. 11

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, DC, *8 January 1971*

PERSONNEL SEPARATIONS
DISCHARGE
UNFITNESS AND UNSUITABILITY
(For general provisions, see AR 635-200)

Effective 1 March 1971

This change amends rehabilitation requirements to eliminate the restrictions on rehabilitation transfers which would involve expenditure of PCS-MPA funds. It also amends figure 1, Individual's Statement to provide for deletion of the sentence pertaining to undesirable discharge if the individual is being considered for discharge for unsuitability in paragraph 6.

AR 635-212, 15 July 1966, is changed as follows:

Page 4, paragraph 7. The text preceding subparagraph *a* is superseded as follows:

7. Requirements. Reassignments accomplished in connection with rehabilitation attempts will normally be made without expending permanent change of station or military personnel Army (PCS-MPA) funds. Exceptions to this policy are provided for in *b*(3) below.

Page 4. Paragraph 7b(2) is superseded as follows:

(2) *Other than replacement stream personnel.* Individuals will be reassigned at least once, with a minimum of 2 months duty in each unit. Reassignment should be between special court-martial jurisdictions where this is possible without a permanent change of station. If this is not possible, and reassignment between Article 15 jurisdictions is not considered desirable because of the circumstances involved in a case, the procedure prescribed in the following paragraph will apply.

This change supersedes C 10, 10 June 1970.

THE ARMY LIBRARY
WASHINGTON, D. C.

(Date individual and counsel sign statement)

SUBJECT: Separation under AR 635–212

TO: (Discharge authority)

1. I have been advised by counsel of the basis for contemplated action to accomplish my separation for (unfitness) (unsuitability) under AR 635–212.

2. I (request) (waive) consideration of my case by a board of officers.

3. I (request) (waive) personal appearance before a board of officers.

4. Statements in my own behalf (are) (are not) submitted herewith (as incl _____).

5. I (request) (waive) representation by (my appointed counsel) (_____ as military counsel) (civilian counsel at my own expense).

6. I understand that I may expect to encounter substantial prejudice in civilian life in the event a general discharge under honorable conditions is issued to me.* (I further understand that, as the result of issuance of an undesirable discharge under conditions other than honorable, I may be ineligible for many or all benefits as a veteran under both Federal and State laws, and that I may expect to encounter substantial prejudice in civilian life.)

7. I understand that I may, up until the date the discharge authority directs or approves my discharge, withdraw this waiver and request that a board of officers hear my case.

8. I have retained a copy of this statement.

(Signature of individual)

(Typed name, SSAN, grade)

Having been advised by me of the basis for his contemplated separation and its effect and the rights available to him, (Name of individual) personally made the choices indicated in the foregoing statement.

(Signature of counsel)

(Type name, SSAN, grade, branch)

*This sentence to be used only if individual has been recommended for discharge under the provisions of paragraph 6a.

Figure 1. Individual's Statement.

Appendix F

Changes in force: C 3, C 6 through C 9, C 11, and C 12

AR 635-212
*C 12

CHANGE
No. 12

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, DC, *3 December 1971*

PERSONNEL SEPARATIONS

DISCHARGE

UNFITNESS AND UNSUITABILITY

(For general provisions, see AR 635-200)

Effective in accordance with messages superseded below

This change amends paragraph 4a to provide for consideration of discharge under honorable conditions for personnel being discharged for drug abuse, in certain instances; changes paragraph 7c to grant waiver authority of counseling and rehabilitation requirements to the special court-martial convening authority in cases of unsuitability; amends paragraph 8 to require psychiatric evaluations on a selective basis for personnel being considered for separation under this regulation; adds DA Form 3822-R (Report of Mental Status Evaluation) (fig. 2).

AR 635-212, 15 July 1966, is changed as follows:

Page 2. Paragraph 4*a* is superseded as follows:

a. An individual separated by reason of unfitness will be furnished an undesirable discharge certificate except that an honorable or general discharge certificate may be awarded if the individual being discharged has been awarded a personal decoration or if warranted by the particular circumstances in the case. Additionally, individuals separated for drug abuse who have been enrolled, and who have fully cooperated, in drug amnesty programs (paragraph 2-5, AR 600-32) will be considered for discharge under honorable conditions when:

(1) The overall character of service, aside from drug usage, warrants it.

(2) The degree or type of drug involvement precludes rehabilitation and restoration to full duty.

Page 4. Paragraph 7*c*(1), as changed by change 8, is superseded as follows:

c. Waivers. Counseling and rehabilitation may be waived as follows:

(1) Counseling required in *a* above and rehabilitation required by *b* above may be waived by the convening authority when separation is being considered under the provisions of paragraph 6*a*(2), (3)(*a*) and (5) or (7) or under the provisions of paragraph 6*b*, except that counseling is required for personnel being considered for separation under the provisions of paragraph 6*b*(1), (3), and (4).

Page 4. Paragraph 7*c*(2), as changed by change 2, is superseded as follows:

(2) The general court-martial convening authority in the cases of unfitness, paragraph 6*a* (1), (3)(*c*), (4), (5), or (6), may waive the requirements of *a* and *b* above when he determines that further duty of the individual will, in his best judgment, create serious disciplinary problems or a hazard to the military mission or to the individual.

Page 4. Paragraph 7*c*(3), added by change 2, is rescinded.

Page 5. Paragraph 8 is superseded as follows:

8. Medical evaluation. *a.* When a unit commander determines that an individual is to be processed for separation under this regulation, he will initially refer the individual to the medical treatment facility providing dispensary care and request a medical and mental status evaluation. Sufficiently detailed information about the reasons for considering the individual unfit or unsuitable should be furnished the medical treatment facility to allow medical examiners a thorough understanding of the contemplated action.

*This change supersedes paragraph 1 of DA message AGPO 681609Z Apr 71 (C), Subject: Interim Changes to AR 635-212 and AR 635-206; DA message AGPO 271421Z Apr 71 (C), Subject: Interim Changes to AR 635-212, and DA message DAAG-PSS 121801Z Nov 71 (C), Subject: Interim Change to AR 635-212.

b. The medical treatment facility providing dispensary care will accomplish the final type physical examination and mental status evaluation. The individual will not be referred to a psychiatrist for a psychiatric evaluation except under the following circumstances:

(1) When an individual is being considered for discharge under the provisions of paragraph 6*a*(7) or *b*(6).

(2) When psychiatric evaluation is specifically requested by the individual subject to separation action.

(3) When psychiatric evaluation is specifically requested by the commanding officer recommending separation action.

(4) When psychiatric evaluation is deemed necessary and appropriate by the medical examiner performing the required medical and mental status evaluation.

(5) When a psychiatric evaluation is requested by the board considering separation action.

c. In all other cases the physician performing the physical examination will accomplish the mental status evaluation. In the exceptional cases detailed in *b*(2) through *b*(5) above, reasons for specifically requesting a psychiatric evaluation will be provided to the psychiatrist. When an individual is being considered for discharge under the provisions of paragraph 6*a*(7) or *b*(6), the psychiatrist doing the psychiatric portion of the medical evaluation will be furnished a copy of the documents which detail the behavior upon which the suspicion of homosexuality rests.

d. In addition to the SF 88 (Report of Medical Examination) and the SF 93 (Report of Medical History) the medical treatment facility will prepare DA Form 3822-R (Report of Mental Status Evaluation) (fig. 2). DA Form 3822-R will be reproduced locally on 8- x 10½-inch paper.

e. For personnel being considered for discharge under paragraph 6*a*(7) or *b*(6), the medical evaluation including a psychiatric study of the individual will include the following:

(1) Personal history.

(2) Opinion regarding the existence of homosexuality.

(3) Opinion as to whether the individual should be—

(*a*) Eliminated from the service under paragraph 6*a*(7) or *b*(6).

(*b*) Retained in service. If retention is recommended, and if considered appropriate, a statement of procedures likely to be of value in the individual's rehabilitation may be included.

f. The medical treatment facility commander will forward the original DA Form 3822-R, including psychiatric study if applicable, to the unit commander. A copy will be filed with the individual's health record.

g. While psychiatric evaluations for the purpose of separation under this regulation are restricted to the situations described in *b* above, commanders are encouraged to refer individuals who are not being considered for separation but manifest behavior problems to mental health facilities for consultation. Under no circumstances will medical personnel be used as an investigative agency to determine facts relative to the individual's behavior.

Page 6. Paragraph 12*a*(12) is superseded as follows:

(12) DA Form 3822-R (fig. 2) or psychiatric report, if applicable. (Include probable effectiveness of further rehabilitative efforts.)

REPORT OF MENTAL STATUS EVALUATION

For use of this form, see AR 635-206 and 635-212; the proponent agency is The Adjutant General's Office.

TO	FROM

1. BEHAVIOR *(CHECK APPLICABLE BOX)* ☐ NORMAL ☐ PASSIVE ☐ AGRESSIVE ☐ HOSTILE ☐ SUSPICIOUS ☐ BIZARRE

2. LEVEL OF ALERTNESS ☐ FULLY ALERT ☐ DULL ☐ SOMNOLENT

3. LEVEL OF ORIENTATION ☐ FULLY ORIENTED ☐ PARTIAL ☐ DISORIENTED

4. MOOD ☐ DEPRESSED ☐ LEVEL ☐ HYPERACTIVE

5. THINKING PROCESS ☐ CLEAR ☐ CONFUSED ☐ BIZARRE

6. THOUGHT CONTENT ☐ NORMAL ☐ ABNORMAL ☐ HALLUCINATIONS ☐ PARANOID IDEATION ☐ DELUSIONS

7. MEMORY ☐ GOOD ☐ FAIR ☐ POOR

IMPRESSION

☐ NO SIGNIFICANT MENTAL ILLNESS.

1. INDIVIDUAL IS MENTALLY RESPONSIBLE. ☐ YES ☐ NO

2. INDIVIDUAL IS ABLE TO DISTINGUSH RIGHT FROM WRONG. ☐ YES ☐ NO

3. INDIVIDUAL IS ABLE TO ADHERE TO THE RIGHT. ☐ YES ☐ NO

4. INDIVIDUAL HAS THE MENTAL CAPACITY TO UNDERSTAND AND PARTICIPATE IN BOARD PROCEEDINGS. ☐ YES ☐ NO

5. INDIVIDUAL MEETS THE RETENTION STANDARDS PRESCRIBED IN CHAPTER 3, AR 40-501. ☐ YES ☐ NO

DATE	SIGNATURE

DA FORM 3822-R, 1 NOV 71

Figure 2

TAGO 3284

C 12, AR 635–212

The proponent agency of this regulation is The Adjutant General's Office. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications) direct to HQDA (DAAG–PSS–S), Washington, DC 20314.

By Order of the Secretary of the Army:

W. C. WESTMORELAND,
General, United States Army,
Chief of Staff.

Official:
VERNE L. BOWERS,
Major General, United States Army,
The Adjutant General.

Distribution:
Active Army, ARNG, and USAR: To be distributed in accordance with DA Form 12–9 requirements for AR, Personnel Separations—A (qty rqr block No. 542).

U.S. GOVERNMENT PRINTING OFFICE: 1971

UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

RALPH EDWARD BALDWIN V. MAJOR GENERAL REGINALD M. CRAM, Adjutant General, National Guard of the United States; BRIGADIER GENERAL PHILLIP A. ALLICON: "JOHN DOE" COMMANDING OFFICER, FORT DIX, NEW JERSEY: ROBERT F. FROEHLKE, Secretary of the Army of the United States; MELVIN LAIRD, Secretary of Defense of the United States; and Lt. General CLAIRE E. HUTCHIN, JR., OR His Successor as Commanding General, First United States Army District of the United States.	UNITED STATES DISTRICT COURT DOCKET NO. 6805

APPLICATION FOR WRIT OF HABEAS CORPUS AND APPLICATION FOR WRIT OF MANDAMUS

To the United States District Court in and for the United States District of Vermont, comes Ralph Edward Baldwin, and being under oath by way of application for writ of habeas corpus, complains of the above named respondents as follows:

1. That your petitioner is a citizen resident of the United States, has his residence at Barre in the County of Washington in the United States District of Vermont, and is within said district, detained and deprived of his freedom and liberty of movement under color of authority of the United States by the respondents, jointly and severally.

2. That the respondent, Reginald M. Cram, holds the rank of Major General in the Army National Guard of the United States and is commanding officer of the Office of the Adjutant General, Camp Johnson, located and stationed at Winooski in the County of Chittendan in the United States District of Vermont.

3. That the respondent Phillip A. Allicon holds the rank of Brigadier General in the Army National Guard of the United States and is the Deputy commanding officer of the Office of the Adjutant General, Camp Johnson, Winooski, Vermont.

4. That the respondent, Claire E. Hutchin, Jr., holds the rank of Lieutenant General in the United States Army, and is the commanding officer of the First United States Army District, Fort George G. Mead, Maryland.

5. That the respondent "John Doe" of unspecified rank in the Army of the United States is the unknown commanding officer of the Army post at Fort Dix, New Jersey.

6. That said respondent, Claire E. Hutchin, Jr., or his successor, has by order dated 2 November 1972 ordered the applicant petitioner to report for active duty under color of the authority of the United States on to wit the 11th day of December, 1972 at the United States Army Reception Station, Fort Dix, New Jersey, and to remain in the custody of the said John Doe, acting under authority of the United States and by color of said authority.

7. The said Reginald M. Cram, now has custody of your petitioner by merit of and authority of your petitioner having enlisted in and now being a member of the Army National Guard of the United States originally assigned to and attached to the 86th Brigade, 5th Armed Division, HHC, an agency, instrumentality and entity of the United States Army and the Department of Defense, which said entity and instrumentality asserts and presently has custody, direction and detention of your petitioner, under color of authority of the United States. Jurisdiction is also claimed under 28 USC Section 1361.

8. Said order and assertion of custody and the right thereto more fully appears in Exhibit"A" attached hereto and made a part hereof.

9. The said respondent, Robert F. Froehlke, is duly appointed by the President of the United States, acting in and serving in the capacity of Secretary of the Army of the United States and in that capacity authorizes and grants authority to the said respondent, Reginald M. Cram, to retain your petitioner in his custody and detain him.

10. The said Melvin Laird is duly qualified and acting as Secretary of the Department of Defense of the United States, by authority of the President of the United States in his office of Commander and Chief of the armed forces of the United States and grants authority to the said Robert F. Froehlke, as aforesaid delegated to the said Reginald M. Cram to assert jurisdiction over and to detain in custody your petitioner.

11. Your petitioner was assigned to Fort Leonard Wood, Missouri, on May 2, 1972, by the Vermont Army National Guard. On June 8, 1972, your petitioner was absent without leave from Fort Leonard Wood. At this time your petitioner was examined by non-military doctors who felt that he should be separated from military service. He was returned to military control at Fort Devons, Massachusetts on July 5, 1972.

12. Your petitioner returned to Fort Leonard Wood on or about July 17, 1972. At this time your petitioner sought a discharge from further military service on the grounds of his unfitness and unsuitability. In support of this request for discharge petitioner submitted letters from the doctors who examined him

13. To the best of your petitioner's knowledge, he complied fully with the Applicable Army Regulation 135-178, when seeking separation from further military service.

14. Your petitioner received no counseling or rehabilitation, as required by Army Regulation 135-178, 7-6(a)(b), by any officer at Fort Leonard Wood after he requested a discharge from military service.

15. Your petitioner is informed and has reason to believe that a psychiatric evaluation of him was requested by the commanding officer of your petitioner's unit at Fort Leonard Wood, as required by Army Regulation 135-178, paragraph 7-7.

16. Your petitioner participated in a psychiatric evaluation while at Fort Leonard Wood, but never learned whether he would get a discharge from further military service.

17. Your petitioner was never notified by his unit commander, in writing, of his right to appear and have his case acted upon by an administrative discharge board, (see 32 Code of Federal Regulations, Section 41.8) , to be represented by appointed counsel, to submit statements in his own behalf, to waive board action and accept discharge under other than honorable conditions, and to be given a reasonable time to consider waiver of board proceedings with the opportunity to consult with counsel prior to a waiver of rights, as required by Army Regulation 135-178, paragraphs 7-8(a), in corporating paragraph 9-2(a)(1-5).

18. Neither was your petitioner notified, in writing, by his unit commander, of the specific allegations on which proposed action is based, the type of discharge certificate that may be issued, and the fact that action has been susnended to give him the opportunity to exercise several privileges, enumerated above, as required by Army Regulation 135-178, paragraphs 7-8(a), in corporating paragraph 9-2(a).

19. Your petitioner was never notified of any action taken by any intermediate commander at Fort Leonard Wood concerning your petitioner's request for a discharge from military service, as required by Army Regulation 135-178, paragraph 7-11.

20. Your petitioner was never notified of any action taken by a commander at Fort Leonard Wood to approve or disprove any recommendation of a unit or intermediate commander or to convene a board of officers to determine whether your petitioner should be separated from military service, as required in Army Regulation 135-178, paragraph 7-12.

21. On or about August 15, 1972, your petitioner was ordered to active participation at Fort Leonard Wood.

22. On August 18, 1972, your petitioner was absent without leave from Fort Leonard Wood and, until the present time, remains absent without leave.

23. Your petitioner is informed and has reason to believe that said Phillip A. Allicon sought his return to state control on or about August 24, 1972, and that said General Allicon planned to process your petitioner as an unsatisfactory participant in the Reserve Enlistment Program. See attached Exhibit "B".

24. Your petitioner is informed and has reason to believe that he was processed by said General Allicon, on or about October 13, 1972, as an unsatisfactory participant in training. See Exhibit "C".

25. Said Lt. General Claire E. Hutchin, Jr., or his successor, overruled the determination of General Allicon as to your petitioner's unfitness when he ordered your petitioner to active duty in a letter dated November 2, 1972. Such action on the part of said Lt. General Hutchin denied your petitioner rights guaranteed to him by Army Regulation 135-178, set forth supra.

26. Your petitioner has not been granted the rights guaranteed to him by 32, Code of Federal Regulations §41.8.

27. Your petitioner further has exhausted all administrative remedies within the United States Army Reserve known or available to him prior to preparing this application for Writ of Habeas Corpus.

28. After the exhaustion of all said administrative remedies known or abailable to your petitioner, the order which is Exhibit "A" was issued and directed to your petitioner.

29. Your petitioner is informed and believes, on reliable medical and psychological information, that he presently suffers a character and behavior disorder, within the meaning of the aforementioned regulations and as a result thereof is suffering apathy, defective attitude and inability to expand effort constructively, within the meaning of 32, Code of Federal Regulations, Chapter 1 §41.6 (g)(3).

30. Notwithstanding the evidence of said conditions, your petitioner has been denied discharge from the reserve component of the United States Army.

31. Your petitioner is informed and has reason to believe that others with the same or similar situation, in the same or similar showing, to that made to the discharge authority within the meaning of 32, Code of Federal Regulations, Chapter 1, have received discharge and separation, in accordance with the regulations aforementioned.

32. Your petitioner has thereby:

(a) Been deprived of rights guaranteed to him by the Code of Federal Regulations, Title 32, Chapter 1.

(b) Been deprived of the right of due process and fair hearing guaranteed to him by the Constitution of the United States.

(c) Been deprived of the right of equal protection and application of the laws and regulations of the United States appertaining to his case and circumstances without rational basis for such distinction or discrimination between your petitioner and others similarily situated.

(d) Your petitioner has been held in custody and deprived of his liberty in violation of the Constitution, Laws and Regulations of the United States and is now so held.

33. Your petitioner has been ordered to report, as is shown in Exhibit "A" on to wit, the 11th day of December, 1972, for further detention, all of which your petitioner says is unlawful.

34. Your petitioner is informed and has reason to believe, on competent medical advice that such detention will cause great and irreparable harm in that it will aggrevate and increase the emotional, psychological and physical disorder and the character and behavior disorders hereinabove alleged, and that compliance with said order would do irreparable emotional and physical injury to your petitioner and, as is shown by the terms of said order, failure to comply with the same will result in the immediate procedures to order your petitioner to active service with the Army of the United States.

35. Your petitioner can post security in this action only with great financial hardship.

WHEREFORE, your petitioner prays:

1. That the Honorable Court forthwith issue a temporary restraining order to the respondents, jointly and severally restraining them as follows:

(a) From enforcing, carrying out or proceeding with the enforcement or carrying out of the order, which is attached hereto, made a part hereof and labelled Exhibit "A".

(b) From taking any steps to order your petitioner to active duty for failure to comply with said order, to attend drills and submit to the custody of the respondents on the 11th day of December, 1972.

(c) From in any why considering, marking, recording, or acting on the absence of your petitioner form said drills, as if it were an unaccused absence, within the meaning of the regulations of the Army National Guard of the United States.

2. That the Honorable Court issue a Preliminary Injunction restraining the respondents, jointly and severally, from enforcing, carrying out or proceeding with the enforcement of the Order addressed to your petitioner commanding him to active duty, and from taking any steps to order your petitioner to active duty for failure to comply with said Order.

3. That the Honorable Court issue a Writ of Habeas Corpus forthwith, directed to the respondents, jointly and severally, commanding them to appear before in the Honorable Court at a time therein specified, to show cause, if any they may have, as to the true cause of petitioner's detention and to show cause, if any they may have, why the respondent should not be released of custody and detention and to make answer, if any they have, to the allegations of the foregoing petition.

4. And that due inquiry may be had in the premises and that this court proceed to determine the facts and the legality of the applicant's detention by the respondents, jointly and severally, and that then and there the Honorable Court will discharge

the applicant, your petitioner, without delay.

5. That the Honorable Court will grant to your petitioner such other and further relief as to the Honorable Court seems meet and just, in accordance with the Laws, Regulations and Constitution of the United States of America.

Dated this 8th day of December, 1972.

H/ Ralph Edward Baldwin
Ralph Edward Baldwin

STATE OF VERMONT

WASHINGTON COUNTY, SS.

Ralph Edward Baldwin at Montpelier in said County and State, in the United States District of Vermont, being first duly sworn on oath, deposes and says, that he has read the foregoing application subscribed by him and knows the contents thereof and understands the same, and knows the same to be true verily believes, except such matters which are alleged to be on information and belief, which said information and belief, is accurate and true as to his best knowledge.

H/ Ralph Edward Baldwin
Ralph Edward Baldwin

Sworn to and Subscribed
this 8th day of December, 1972
before me

Jane Chaddi
Notary Public
My commission expires 2/10/73

DEPARTMENT OF THE ARMY
HEADQUARTERS, FIRST UNITED STATES ARMY
FORT GEORGE G. MEADE, MARYLAND 20755

AHAAG-CA
LETTER ORDERS D- 11-019

2 November 1972

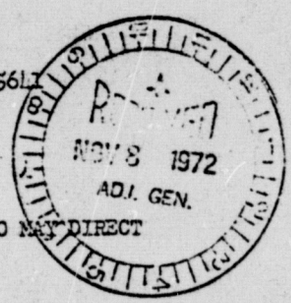
SUBJECT: Order to Active Duty - Reservist (INVOLUNTARY)

TC 116. By the direction of the President, the following named individual is ordered to ACTIVE DUTY for the period indicated unless sooner relieved. He will proceed from his current location in sufficient time to report as indicated on the date specified.

Ralph Edward Baldwin
59 Elm Street
Barre, Vermont 05641

008-42-8372 PV1 09B00(UNQUAL)
HHC, 86th Bde, 50th Armd Div., RD # 4,
Montpelier, Vermont 05602
UIC: WPW8AA

ADMINISTRATIVE ACCOUNTING DATA
Authority: 10 U. S. C. 673a, AR 135-91
Home of Record 59 Elm Street, Barre, Vermont 0564[illegible]



PPN: NA
Component: ARNG
Sex: Male
PCS MDC: LAB3
Ultimate Assignment: FOR FURTHER ASSIGNMENT AS CO MAY DIRECT

Effective date (OAD): 11 December 1972

FOR THE INDIVIDUAL
Effective date of active duty: 11 December 1972
Period of Active Duty: 22 months 10 days
Assign to: US Army Reception Station, Fort Dix, New Jersey 08640
Reporting date: 11 December 1972
Availability date: To be determined by CO USAOSREPLSTA (If applicable)
Port call data: To be determined by CO USAOSREPLSTA (If applicable)

Special Instructions:
1. Term of enlistment of member concerned is extend as necessary to permit completion of period of active duty for which ordered and/or served if applicable.
2. You are relieved from your present National Guard or USAR assignment upon reporting date to Reception Station.
3. Reception Station will use orders format TC 209 (AR 310-10) for further assignment.
4. Comply with the following numbered items of DA Supplemental instructions: 1, 16, 26, 39, 51 and 82.
5. You or your agent are required to report to the family housing/housing referral office servicing

Petitioner's Exhibit "A"

STATE OF VERMONT
OFFICE OF THE ADJUTANT GENERAL
CAMP JOHNSON
WINOOSKI
05404

PAA/cbp

24 August 1972

SUBJECT: Return to State Control--Ralph E. Baldwin

Commanding General
USATC Engineer and Fort Leonard Wood
ATTN: ALBHPA-AIT-O
Fort Leonard Wood, Missouri 65473

1. Reference is made to REP trainee Ralph E. Baldwin, PV2, 008-42-8372, HHC 86 Bde 50 Armd Div, Vermont Army National Guard, assigned to your installation per Letter Orders 5-1, this Headquarters, dated 2 May 1972, copy of which is attached.

2. Baldwin's history of unsatisfactory performance is outlined below:

a. Subject reported as scheduled on 23 May 1972.

b. This office was notified that subject was absent without leave on 8 June 1972.

c. Subject was returned to military control at Fort Devens, Massachusetts on 5 July 1972.

d. This office was notified that subject departed from Fort Devens, Massachusetts for Fort Leonard Wood, Missouri on 17 July 1972.

e. This office was again notified that subject had absented himself without leave on 8 August 1972.

f. Subject has again been contacted by the National Guard and refuses, under any circumstances, to return to military control.

Petitioner's Exhibit "B"

SUBJECT: Return to State Control--Ralph E. Baldwin

24 August 1972

3. In view of the policy outlined in paragraph 6-3, Chapter 6, AR 630-10, this office determines that it will serve no useful purpose to return Baldwin for completion of his REP training, based on the statement made in paragraph 2f above where he refused to return to military control.

4. It is requested, therefore, that Baldwin be returned to the control of the State of Vermont with all records forwarded to this office as indicated in AR 630-10, to include certified copies of the morning reports indicating the periods of absence without leave.

5. Upon return to State control, immediate action will be taken as indicated in paragraph 6-8c, AR 630-10 to process this individual as an unsatisfactory participant in the Reserve Enlistment Program.

FOR THE ADJUTANT GENERAL:

1 Incl
as

PHILLIP A. ALLICON
Brigadier General (Vt)
Deputy Adjutant General

Copies furnished:
Col Bourgeois
Cpt Leahy

STATE OF VERMONT
The Adjutant General's Office
Building #1, Camp Johnson
Winooski, Vermont 05404

AG VT-A 13 October 1972

SUBJECT: Request for Active Duty Orders UP AR 135-91

Commanding General
Headquarters, First United States Army
Fort George G. Meade, Maryland 20755

1. Request that active duty orders be issued on the individual named below under the provisions of AR 135-91.

2. I have personally verified the circumstances in this case and have determined that the administrative requirements of AR 135-91 have been adequately complied with and that the individual concerned failed to fulfill the satisfactory participation requirements of that regulation.

3. The following information is provided:

a. Full name: RALPH EDWARD BALDWIN

b. Grade: PV2

c. SSAN: 000-42-0372

d. ARNG unit of assignment, mailing address and UIC: HHC 86 Bde 50 Armd Div, RD#4, Montpelier, VT 05602 WPJDAA

e. HOR: 59 Elm Street, Barre, VT 05641

f. DOR: 20 July 1972

g. Period of AD requested: 1 yr 10 mo 10 da

h. Time previously served on AD AT, or ADT: 1 mo 10 da

i. PMOS: 05B20

Petitioner's Exhibit "C"

SUBJECT: Request for Active Duty Orders UP AR 135-91

j. DMOS: 62B20

k. BPED: 5 December 1972

l. BASD: 23 May 1972

m. Authority: 10 USC 673a and Paragraph 12 AR 135-91:

n. DOB: 24 February 1954

FOR THE ADJUTANT GENERAL:

1 Incl
Ltr to PV Baldwin

PHILLIP A. ALLISON
Brigadier General (VT)
Deputy Adjutant General

UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

RALPH EDWARD BALDWIN, Petitioner v. MAJOR GENERAL REGINALD M. CRAM, ET AL, Respondents	CIVIL NO. 6805

MOTION FOR SUMMARY JUDGMENT

Preliminary Statement

The plaintiff in the above-captioned matter, Ralph E. Baldwin, is a private in the Vermont Army National Guard (hereinafter VANG) who has been ordered to active duty in the United States Army due to unsatisfactory participation in that organization. Baldwin does not attack the procedure by which he has been ordered to active duty. Rather, petitioner asserts that in the summer of 1972, while he was on initial active duty, he was wrongfully denied a discharge as unsuitable for service. As will be demonstrated, the Court does not have subject matter jurisdiction, the petitioner has no standing to complain, and the petitioner has failed to state a claim upon which relief may be granted.

I. FACTUAL BACKGROUND

The sequence of events which culminated in Baldwin being ordered to active duty are as follows:

1. On December 5, 1971 petitioner enlisted under the Reserve Enlistment Program - 1963 (REP-63) as a Reserve Member of the Army for service in the VANG for a period of six years. Appendix A, at 1, block 7; p. 3, fourth paragraph. At the time of enlistment Baldwin was made aware that his enlistment would entail an initial tour of active duty for training, Appendix A, at 3, paragraphs 2-3, and was further advised that if he failed to participate satisfactorily in the VANG he could be ordered to active duty for twenty four months less time already spent on active duty. Id. at 1, block 53; p. 3. At the time of enlistment, Baldwin was examined and found medically qualified for enlistment. Baldwin did not advise the Army physicians of any of the physical and mental problems which he now claims should entitle him to discharge. Id. at 5-8.

2. On May 2, 1972 Baldwin was ordered to initial active duty training for a period of thirty weeks, commencing at Fort Leonard Wood, Missouri on May 23, 1972. Id. at 11. He reported as ordered.

3. While at Fort Leonard Wood Baldwin developed numerous physical complaints. On May 30, 1972, prior to his assignment to a training company, he complained of "pins and needles" in his shoulder and feet and numbness in his feet. Upon examination no abnormality was found and he was advised to shift the weight on his feet while standing.

The shoulder pain occurred after carrying a loaded duffle bag. Id. at 14. On June 2, 1972, Baldwin reported to a Fort Leonard Wood clinic and was found to have a cold and temperature one degree above normal. Lozenges and medication were prescribed. Id. at 21. On June 7, 1972, Baldwin again reported to a clinic and on this occasion was found to have a rash which covered his entire body. An allergy was suspected by the examining doctor. Baldwin was referred for a dermatology consultation. Id. at 16-18. The consultation apparently was not performed, Id. at 18, persumably because on June 8, 1972, after reporting to the same clinic as he had earlier, Id. at 16, Baldwin absented himself without leave. Id. at 27.

4. On July 5, 1972 Baldwin returned from his absence without leave by surrendering to the Provost Marshal at Fort Devens, Massachusetts. Id. at 29. On July 17, 1972 he left Fort Devens for Fort Leonard Wood. Id. at 32, paragraphs 2C, 2D.

5. After Baldwin's return to Fort Leonard Wood, on July 25, 1972 he was interviewed at a Mental Hygiene Clinic at that post. During this interview he apparently complained about his feet and claimed that he was rejected for the VANG due to foot problems during the winter of 1971. Baldwin further stated that he finally managed to enlist by using a favorable medical statement that his step-father obtained from a local doctor. He claimed he was never examined after the occasion on which he was rejected. Baldwin's medical records do not contain the alleged doctor's statement, nor did Baldwin indicate any problems on the medical questionnaire he completed on December 5, 1971. See Appendix A, at 14-25; 5-6. The doctor at the

mental hygiene clinic noted, without explanation, "Discharge will be necessary. If warranted I would prefer medical to 212." Whether the doctor felt petitioner was psychiatrically unsuited to continued service was not indicated. The doctor referred petitioner for a dermatology consultation. Id. at 19. No dermatologist was present at Fort Leonard Wood at that time, but a second doctor examined petitioner and found that his feet showed evidence of the blistering of which he complained. The second doctor after consultation with a third, recommended that a dermatology consult be held in August. Thus, it would appear Baldwin's discharge was not contemplated at that time. The second doctor found no basis for a medical discharge as of July 25, 1972. Id. On July 27, 1972 Baldwin's blisters were again noted. Id. at 20.

6. On August 8, 1972 petitioner again absented himself without leave from Fort Leonard Wood. Id. at 31.

7. Upon being advised of petitioner's August absence, Major William C. Wilson (VANG) contacted petitioner who advised him that "wild horses could not make him return to duty, and that he would go to Canada rather than return to the Army." Appendix J. See Appendix H. Upon receiving this response, the Adjutant General, VANG, requested that petitioner be returned to state control so that he could be ordered to involuntary active duty as an unsatisfactory participant. Appendix A at 32-33. On August 31, 1972 petitioner was released by Fort Leonard Wood and reassigned to VANG. Id. at 36-41.

8. On October 13, 1972 VANG requested that the Commanding General First United States Army, order petitioner to active duty as an unsatisfactory participant in the National Guard pursuant to paragraph 11.1(b) Army Regulation 135-91. Appendix B at 3; Appendix C. On the same day a letter was sent to Baldwin advising him of this action and advising him that he could submit an appeal within fifteen days of receipt of the letter. Appendix K, paragraph 2 & attachment. No appeal was submitted. Appendix D; Appendix K. By letter of November 2, 1972, Baldwin was advised that he had been ordered to active duty because of unsatisfactory participation in the VANG. By the same letter, copies of the Order requiring Baldwin to report to Fort Dix, New Jersey on December 11, 1972 were sent to him. Appendix A at 34-35; Appendix B at 3-4. On November 19, 1972 Baldwin was ordered discharged from his state status. On December 8, 1972 this action was filed and Baldwin's entry on active duty temporarily restrained.

II. PETITIONER DOES NOT RELY ON THE CORRECT DISCHARGE REGULATION

It is apparent from the petition that Baldwin is mistaken as to the Army regulations involved in this case. During the time petitioner was assigned to Fort Leonard Wood, he was subject to active Army regulations, not those pertinent to National Guardsmen and Army Reservists. Appendix E, paragraph 1-1a (2). Specifically, a discharge for unsuitability or unfitness while petitioner was on active duty would have been pursuant to Army Regulation 635-212. See Appendix F. Chapter 7, AR 135-178 bears the same relation to the discharge of unsuitable and unfit soldiers not on active duty as AR 635-212 does to active duty servicemen. See Palermo v. Laird, 72 Civ. 2785 (S.D.N.Y. Nov. 14, 1972)(copy enclosed as Appendix I). Accordingly, AR 135-178 could not have been used to discharge Baldwin at Fort Leonard Wood. Further, VANG officers have not considered discharging petitioner as unsuitable during the periods that he has been in that organization's control. Appendix L.

III. THE PETITIONER LACKS STANDING TO COMPLAIN OF A FAILURE OF THE ARMY TO DISCHARGE HIM

It is apparent that by relying on the incorrect regulation the plaintiff fails to state a claim upon which relief can be granted. Nevertheless, this section discusses another aspect of petitioner's claim as though the proper regulation, AR 635-212, were relied upon by petitioner in making his claim.

Two circuit courts of appeals and two district courts have considered claims similar to Baldwin's in the relatively recent past and form a solid basis for the position the Government espouses here. All have resoundingly rejected the motion that persons such as the petitioner here have standing to complain that the Army has failed to discharge them under AR 635-212 or that the courts have jurisdiction to review a military commander's action or inaction where such discharges are involved. The cases are as follows: Allgood v. Kenan, 470 F.2d 1071 (9th Cir. 1972), rev'g, 2SSLR 3145 (N.D. Cal. 1969); Silverthorne v. Laird, 460 F.2d 1175 (5th Cir. 1972), aff'g, 341 F. Supp. 443 (W.D. Tex. 1972); Palermo v. Laird, supra.*

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*The Army's agreement to a stay while a mental examination of Palermo was conducted was contrary to Army policy and was made unbeknownst to the Personnel Affairs Branch, Litigation Division, Office of the Judge Advocate General, Department of the Army, which is responsible for such policy decisions in cases being litigated. The Army would not agree to such a stay in this case. It should be noted that petitioner has a right to request and receive a full physical and mental examination upon reporting to Fort Dix (paragraph 15, AR 135-91, Appendix C), and the Army has the right to require him to report there to obtain it. Karpinski v. Resor, 419 F.2d 531 (3d Cir. 1969). See Keister v. Resor, 462 F.2d 471 (3d Cir. 1972); Jolicoeur v. Laird, 344 F. Supp. 1125 (D. Minn.), aff'd, 462 F.2d 1234 (8th Cir. 1972).

The wording of the Ninth Circuit concisely and correctly states the courts' position:

> On the facts of this case, judicial review is impermissible. Not all military regulations exist for the benefit of the soldier or grant the soldier the right to compel the military to act. The Army's resort, or non-resort, to AR 635-212 to effect the discharge of soldiers deemed unfit or unsuitable is a matter committed to the discretion of the Army, and we are without power to review the exercise of that discretion. Orloff v. Willoughby, 345 U.S. 83 (1953). Accord, Silverthorne v. Laird, 460 F.2d 1175, 1186 (5th Cir. 1972). This regulation exists for the benefit of the Army, and it does not provide for a request by a soldier for his own discharge. The decision to seek a soldier's release for unfitness or unsuitability under the regulation is one to be made in the first instance only by the soldier's military commanders. And commanders are not required to initiate proceedings for discharge, or to continue proceedings already initiated, even if military medical consultants have recommended that report to the regulation might be appropriate in a given case. Cf. Silverthorne v. Laird, supra.

Allgood v. Kenan, 470 F.2d 1071, 1073-74 (9th Cir. 1972).

The statement of the district court in Silverthorne v. Laird further expounds on this point and extends its logic. 341 F. Supp. at 445-47. The Court's language there is very clear and the Government can add little to it, but to say that this is the position the Government espouses here. The essence of the Court's ruling in Silverthorne is that the regulation exists for the benefit of the Army, to enable it to rid itself of undesirables, while ensuring the individual the necessary

procedural safeguards. This is a discretionary decision for the Army and is not one which should be subject to court review on the basis that it is a ministerial duty. "It is difficult to imagine a determination less appropriate for the courts or more appropriate for the Army." Id. at 446.

Patterson v. Stancliff, 330 F. Supp. 110 (D. Vt. 1971) is in no way contrary to the cases previously cited. See Silverthorne v. Laird, 341 F.Supp. 443, 446 n. 3 (W.D. Tex.), aff'd, 460 F.2d 1175 (5th Cir. 1972). The Court in Patterson simply ordered the Army to either discharge the petitioner or refuse to do so for reasons set forth in the regulations. The facts in Patterson show that the entire chain of command had recommended the petitioner's discharge and the Army area commander had refused to accept the recommendations for reasons utterly unrelated to AR 135-78. The distinction here is that none of Baldwin's commanders have even initiated action to discharge him, much less recommended his discharge. It is the further position of the Government that in view of Silverthorne and Allgood, even the limited review in Patterson was in error.

Conclusion

Petitioner fails to state a claim upon which relief can be granted, lacks standing to complain of a failure to be discharged and cannot show that a ministerial duty owed to him was violated. Summary judgment should be granted for all federal defendants.

Dated at Rutland, District of Vermont, this 13th day of September, 1973.

UNITED STATES OF AMERICA
GEORGE W. F. COOK
United States Attorney

By: Jerome F. O'Neill
JEROME F. O'NEILL
Assistant U. S. Attorney

CERTIFICATE OF SERVICE

I, Jerome F. O'Neill, Assistant United States Attorney for the District of Vermont, hereby certify that I served a copy of the foregoing MOTION FOR SUMMARY JUDGMENT on the petitioner, Ralph E. Baldwin, by mailing same to his attorney, Mary Just Skinner, Esq., Vermont Legal Aid, Inc., 26 State Street, Montpelier, Vermont 05602.

Jerome F. O'Neill
JEROME F. O'NEILL
Assistant U. S. Attorney

APPENDICES

Appendix A -- Personnel Records of Ralph E. Baldwin

Appendix B -- Records

Appendix C -- AR135-91 (Reserce Components -- Policies and Procedures Governing Satisfactory Participation)

Appendix D -- Affidavit of Major William M. Toohey

Appendix E -- AR135-178 (Reserve Components -- Separation of Enlisted Personnel)

Appendix F -- AR635-212 (Personnel Separations -- Discharge Unfitness and Unsuitability)

Appendix G -- AR635-200 (Personnel Separations -- Enlisted Personnel)

Appendix H -- AR630-10 (Personnel Absences -- Absence Without Leave and Desertion)

Appendix I -- Palermo v. Laird

Appendix J -- Affidavit of Major William C. Wilson

Appendix K -- Affidavit of Carol B. Potts, with attachments

Appendix L -- Affidavit of Brigadier General Phillip A. Allicon

UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

RALPH EDWARD BALDWIN, Petitioner v. MAJOR GENERAL REGINALD M. CRAM, ET AL, Respondents	CIVIL NO. 6805

MOTION TO DISMISS

Defendants Doe, Froehlke, Laird and Hutchin, the federal defendants, by their attorney, George W. F. Cook, United States Attorney for the District of Vermont, hereby move for dismissal of this action pursuant to Rule 12(b)(1),(6), Federal Rules of Civil Procedure, and in support thereof state as follows:

1. This Court does not have subject matter jurisdiction to consider the claims advanced by the plaintiff.

2. Plaintiff does not have standing to complain that the Army has failed to discharge him under AR 635-212 and thus fails to state a claim upon which relief can be granted.

Respectfully submitted,

GEORGE W. F. COOK
United States Attorney

By:
JEROME F. O'NEILL
Assistant U. S. Attorney

March 14, 1974

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UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

RALPH EDWARD BALDWIN,

Petitioner

v.

MAJOR GENERAL REGINALD M. CRAM, ET AL,

Respondents

CIVIL NO. 6805

MEMORANDUM OF POINTS AND AUTHORITIES

The federal defendants hereby incorporate by reference the arguments and case law set out in their motion for summary judgment of September 14, 1973. The federal defendants maintain the position set out there and make this motion only to allow the court to rule without an examination of any factual questions.

Since the Government relies on the arguments set out in its motion for summary judgment, there is no point in restating them here and for this reason they only are incorporated by reference.

Respectfully submitted,

GEORGE W. F. COOK
UNITED STATES ATTORNEY

By:
JEROME F. O'NEILL
ASSISTANT U. S. ATTORNEY

March 14, 1974

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HEALTH RECORD | CHRONOLOGICAL RECORD OF MEDICAL CARE

DATE	SYMPTOMS, DIAGNOSIS, TREATMENT, TREATING ORGANIZATION (Sign each entry)
30 MAY 1972	Troop Medical Clinic No. 0 USCAMA, Fw, F.O. 65473 FELT + SHOLDER p/c "sins + needs." Pt in bottoms of bed when standing. Px: no loss of sensation circulation or motor function in feet. Pain @ shoulder after carrying duffel bag. Px - no swelling or C.T. Dx - ? cut off in foot caused when standing. Disp - right out when steady. Treatment Rx Isolation Warning Stamp Put D.S. Pt Aspirin Neurapsis Pt - Relief F/U Tx Check Right Sig Off + Pt when stamp Pt Rx Caution when Tx in 1 wk Heard Shoulder + Stiffness (cont)

J. H. OGNIBENE D.P.M.
CPT-MSC-US-ARMY

PATIENT'S IDENTIFICATION (Use this Space for Mechanical Imprint)	PATIENT'S NAME (Last, First, Middle initial)	SEX
	YEAR OF BIRTH / RELATIONSHIP TO SPONSOR / COMPONENT OR STATUS / DEPARTMENT OR SERVICE	
	SPONSOR'S NAME / RANK/GRADE	
	SVC OR IDENTIFICATION NO. / ORGANIZATION	

CHRONOLOGICAL RECORD OF MEDICAL CARE
Standard Form 600
Revised 1969
General Services Administration and
Interagency Committee on Medical Records
FPMR 101-11.909-5
600-101

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DATE	SYMPTOMS, DIAGNOSIS, TREATMENT, TREATING ORGANIZATION (Sign each entry)
	no reaction + abscess fully healed
	no signs of effusion yet Clear
	J. H. OGNIBENE D.P.M.
	CPT. MSC U.S. ARMY

HEALTH RECORD	CHRONOLOGICAL RECORD OF MEDICAL CARE
DATE	SYMPTOMS, DIAGNOSIS, TREATMENT, TREATING ORGANIZATION (Sign each entry)

12 JUN 19[illegible] — US ARMY TROOP MEDICAL CLINIC NO. 2 T986
bacterial rash pubis 2° to
cloth. allergy
Dipo: Med Clin

7 JUN 1972 — Podiatry Clinic
1 w — Trp Med Clinic # 2 — continue c plan Tx

J. B. OGNIBENE D.P.M.
CPT. MSC. U.S. ARMY

8 JUN 19[illegible] — US ARMY TROOP MEDICAL CLINIC NO. 2 — Fine macular rash, ND — allergy to clothes ??
Rx Kenalog spray
Benadryl 25mg + 60A = Stat

MEDICAL HYGIENE CONSULTATION SEC.
FT. LEONARD WOOD, MO.
5 JUL 1972

PATIENT'S IDENTIFICATION (Use this Space for Mechanical Imprint)

PATIENT'S NAME (Last, First, Middle initial)			SEX
[illegible] DWIN RALPH			M
YEAR OF BIRTH	RELATIONSHIP TO SPONSOR	COMPONENT OR STATUS	DEPARTMENT OR SERVICE
1954		NG	ARMY
SPONSOR'S NAME			RANK/GRADE
			E-1
SVC OR IDENTIFICATION NO.		ORGANIZATION	
008 42 8372		E-1-2	

CHRONOLOGICAL RECORD OF MEDICAL CARE
Standard Form 600
Revised 1969
General Services Administration and
Interagency Committee on Medical Records
FPMR 101-11.504
5010-104-01

16

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Standard Form 513
Rev. August 1951
Bureau of the Budget
Circular A-32

* U.S. GOVERNMENT PRINTING OFFICE : 1951 O—910373

CLINICAL RECORD | **CONSULTATION SHEET** TMC #3

REQUEST

TO:	FROM: (Requesting ward, unit, or activity)	DATE OF REQUEST
Int Med Clinic	TMC #3	7 Jan 72

REASON FOR REQUEST (Complaints and findings)

BLT c possible allerg to clothing - lin
fine pupils rash allover body c no HRD
Sx exc Rash begn c onset of uniforms.
Plan advice + profile.

PROVISIONAL DIAGNOSIS

DOCTOR'S SIGNATURE	APPROVED	PLACE OF CONSULTATION	☑ EMERGENCY
M V Jones		☐ BEDSIDE ☐ ON CALL	☐ ROUTINE

CONSULTATION REPORT

Pt c rash - mainly on back & chest some extrem involvement. Rash is macular. Pt unsure as to day when began.

Pt denies any allergies & .

Tentative pt should have been informed to consult dermatology will do so.

(Continued on reverse side)

SIGNATURE AND TITLE	DATE	IDENTIFICATION NO.	ORGANIZATION
1LT			

PATIENT'S IDENTIFICATION (For typed or written entries give: Name—last, first, middle; grade; date; hospital or medical facility)	REGISTER NO.	WARD NO.
BALDWIN RALPH 8372 E-4-2 E-1		

CONSULTATION SHEET
Standard Form 513
513-104

17

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Standard Form 513
Rev. August 1954
Bureau of the Budget
Circular A-32

U D a O -

* U S GOVERNMENT PRINTING OFFICE : 1970 O - 771

CLINICAL RECORD	CONSULTATION SHEET

REQUEST

TO:	FROM: (Requesting ward, unit, or activity)	DATE OF REQUEST
Dermatology	Ort. Med.	7 June

REASON FOR REQUEST (Complaints and findings)

Pt c macules, pruritic rash which worsens as day wears on. Please eval.

PROVISIONAL DIAGNOSIS

R52.9

DOCTOR'S SIGNATURE	APPROVED	PLACE OF CONSULTATION	
		☐ BEDSIDE ☐ ON CALL	☐ EMERGENCY ☐ ROUTINE

CONSULTATION REPORT

(Continued on reverse side)

SIGNATURE AND TITLE	DATE	IDENTIFICATION NO.	ORGANIZATION

PATIENT'S IDENTIFICATION (For typed or written entries give: Name—last, first, middle; grade; date; hospital or medical facility)	REGISTER NO.	WARD NO.
Baldwin, Ralph 008-42-3372 E-4-2 E-D TMC#3		

CONSULTATION SHEET
Standard Form 513
513-104

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Standard Form 513
Rev. August 1954
Bureau of the Budget
Circular A-32

* U.S. GOVERNMENT PRINTING OFFICE : 1961 O—596373

CLINICAL RECORD	CONSULTATION SHEET

TO: [redacted] | FROM: (Requesting ward, unit, or activity) [redacted] | DATE OF REQUEST 25 JUL 1312

REASON FOR REQUEST (Complaints and findings)

Pt. No claims he has applied for Veterans Adm. last winter, but told [illegible] problem with feet which existed prior to period of enlistment of solds. Pt claims stopped get letter from Board Adm which turned down claim he has now reopened.

Discharge will be necessary. If warranted I would prefer medical to [illegible]

PROVISIONAL DIAGNOSIS

DOCTOR'S SIGNATURE	APPROVED	PLACE OF CONSULTATION ☐ BEDSIDE ☐ ON CALL	☐ EMERGENCY ☐ ROUTINE

CONSULTATION REPORT

Pt. complains of paresthesias — scaly blistering of both feet — present many years.

Exam — confirms pt's description & dead skin present & scaling evident.

(1) No dermatologist is present on board now.

(2) Regulations have no classification of this type of problem for discharge of medical basis.

(3) Pt. could be referred to [redacted] orthopedic clinic, to see if they have suggestions.

(4) Can not board patient on basis of internal medicine problem now.

([redacted]) ∑ PT. DISCUSSED & DR. CHMELIK

PLAN — Perhaps [illegible] Consult in August would be helpful

(Continued on reverse side)

SIGNATURE AND TITLE	DATE	IDENTIFICATION NO.	ORGANIZATION
[redacted]	25 Jul.		

PATIENT'S IDENTIFICATION (For typed or written entries: last, first, middle; rank; date; hospital or medical facility)

REGISTER NO.	WARD NO.

CONSULTATION SHEET
Standard Form 513
513-101

[redacted]

[redacted]

E-4-2

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DATE	SYMPTOMS, DIAGNOSIS, TREATMENT, TREATING ORGANIZATION (Give each entry)
27 JUL 1972	Podiatry Clinic
TW	Trp Med Clinic # 2 Routine Care LD 3 days

J. H. OCNIBENE D.P.M.
CPT. MSC. U.S. ARMY

HEALTH RECORD | CHRONOLOGICAL RECORD OF MEDICAL CARE

DATE	SYMPTOMS, DIAGNOSIS, TREATMENT, TREATING ORGANIZATION (Sign each entry)
Jan 2 2 PM	Cold y Tylt Coly Code A x 48 Subdivision on RSF Lozenge Lozenge Lozenge

PATIENT'S IDENTIFICATION (Use this Space for Mechanical Imprint)

PATIENT'S NAME (Last, First, Middle initial)			SEX
Bateman, Ralph			M
YEAR OF BIRTH: 1951	RELATIONSHIP TO SPONSOR	COMPONENT OR STATUS: NG	DEPARTMENT OR SERVICE: A
SPONSOR'S NAME			RANK/GRADE: E-3
SVC OR IDENTIFICATION NO.: AFR-112-A373		ORGANIZATION: F-41-2	

CHRONOLOGICAL RECORD OF MEDICAL CARE

Standard Form 600
Revised 1960
General Services Administration
Interagency Committee on Medical Re
FPMR 101-11.6
600-104

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UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

RALPH EDWARD BALDWIN V. MAJOR GENERAL REGINALD M. CRAM, Adjutant General, National Guard of the United States; BRIGADIER GENERAL PHILLIP A. ALLICON; "JOHN DOE" COMMANDING OFFICER, FORT DIX, NEW JERSEY; ROBERT F. FROEHLKE, Secretary of the Army of the United States; MELVIN LAIRD, Secretary of Defense of the United States; and LT. GENERAL CLAIRE E. HUTCHIN, JR., His Successor as Commanding General, First United States Army District of the United States.	DOCKET NO. 6805

AFFIDAVIT

Ralph Baldwin, being duly sworn, deposes and states:

1. He is the plaintiff in the above-captioned matter.

2. He first applied to the Vermont Army National Guard (hereinafter "VANG") in early October, 1971. He filled out longhand an informational sheet, Report of Medical History, with the assistance of his mother.

3. On the basis of the above application he was found ineligible for VANG.

4. He therefore re-applied on December 5, 1971 for entry to VANG. Accompanying his second application, which did not make reference to feet and nervous disorder problems as his first application had, was a letter from Dr. Kendall Frost, his local physician. This letter stated briefly that he did not suffer from foot or nervous disorders and could serve in a program such as VANG.

5. His second application for VANG forms a portion of defendant's Appendix A, appended to Motion for Summary Judgment, September 13, 1973.

6. While serving at Fort Leonard Wood, Missouri, he experienced severe problems with his feet and nerves. He saw medical personnel on these occasions.

7. Upon his return to Fort Leonard Wood, on or about

July 25, 1972, from being absent without leave, he was informed by his commanding officer that he would be discharged because they "didn't want a man like him in the service." His commanding officer informed him he would institute discharge proceedings.

8. His commanding officer thereafter made an appointment for him to have a medical hygiene consultation on July 25, 1972.

9. At such consultation he was informed by the doctor that that he was physically in poor shape, that he had a bad nervous problem, and that therefore he would be discharged, either on medical grounds or as a "212" discharge.

10. The doctor further informed him that he and the commanding officer would apply to the Medical Board for a discharge.

11. Although he was acutely unhappy at Fort Leonard Wood and couldn't sleep at night, he remained there awaiting his discharge. During this period he was informed that the application for discharge was being held up by a report from a dermotologist.

12. Thereafter he was never informed that his discharge was being processed through medical channels, that his discharge was being processed according to 635-212, that action was being instituted against him under the Uniform Code of Military Justice or that he had a right to a hearing before a board of officers, such hearing to be initiated by written notice informing him that he had the right to present his case before the board of officers, to submit statements on his own behalf, to be represented by counsel, to waive the above rights in writing and to withdraw his waiver anytime before said hearing.

13. Nor at anytime at Fort Leonard Wood did he receive counseling or rehabilitation, though he had been informed by his commanding officer that discharge proceedings had been begun against him.

14. He continues to desire a discharge from VANG and feels that he should not be forced to return to active duty in the Army as his commanding officer at Fort Leonard Wood had informed him in July, 1972, that he was to be processed immediately for a discharge.

Dated this 19th day of February, 1974 in Montpelier, Vermont.

Ralph Baldwin

Subscribed and Sworn
to before me this
19th day of February,
1974.

Notary Public